

***United States Court of Appeals
for the Second Circuit***



APPENDIX

ORIGINAL 75-1331

B
P/S

In The
United States Court of Appeals

For The Second Circuit

No. 75-1331

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

vs.

RONALD GIGLIOTTI,

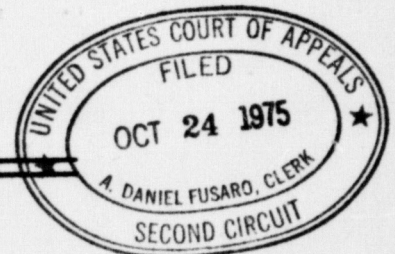
Defendant-Appellant.

*On Appeal from the United States District Court for the Eastern
District of New York*

APPENDIX FOR DEFENDANT-APPELLANT

Volume II, pp. 216 - End

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1 THE COURT: Whether it's during cross or whether
2 it's during direct --

3 MR. LA ROSSA: All right. I except your
4 Honor's ruling. I asked you and you said, "No".

5 THE COURT: Let me say this to you. On this
6 question of gambling, gains and losses, as you know
7 the law is that a witness is entitled to deduct
8 any losses against any winnings.

9 MR. LA ROSSA: Yes sir.

10 THE COURT: And so that I almost gave the jury
11 an instruction to that effect.

12 Now, this -- the testimony so far from this
13 witness is -- was that he was fairly heavily in debt.
14 I don't suppose he got heavily in debt by his gambling
15 gains exceeding his losses.

16 MR. LA ROSSA: I think the law also requires --
17 may it please the Court, that the winnings must be
18 reported and the losses reported.

19 THE COURT: Must be deducted.

20 MR. LA ROSSA: Yes sir.

21 THE COURT: There's no question about it. If
22 this fellow says he didn't win anyway. We've got one
23 race that he remembers he won.

24 MR. LA ROSSA: I'm going to argue that to the
25 jury.

1 THE COURT: Just bear that in mind.

2 MR. LA ROSSA: I wouldn't mind if you gave that
3 instruction to the jury right now that all winnings
4 must be reported and losses offset against winnings.
5 I wouldn't mind that at all.

6 THE COURT: Well, all right. Just bear in mind
7 what the law is. That you may deduct gambling losses.

8 MR. LA ROSSA: Yes, sir. I am aware of that.

9 MR. NAFTALIS: Your Honor, if I may. I am
10 sorry to bother the Court. The defense have made
11 clearly to the Court that they wish to have the logs
12 made available of the surveillance. The Government
13 is quite willing --

14 MR. LA ROSSA: You can let him go if you want.
15 The witness is standing there.

16 MR. NAFTALIS: Yes. Why don't you stand out
17 in the hall, Frank.

18 (Whereupon, the witness retired from the
19 courtroom.)

20 MR. NAFTALIS: The Government is quite willing
21 to make the logs available. We might need additional
22 time to get back -- to get them back from 65th Street.

23 THE COURT: Can't somebody bring them in.

24 MR. NAFTALIS: Agent Ruffels is the agent
25 who keeps the logs. And they are in his personal

1 records. It may take a bit longer. And I wanted to
2 be certain that we are here. We want to comply with
3 the Court's request.

4 THE COURT: They don't have to be here by 2:15.
5 This witness is going to be on the stand for some time.

6 MR. NEWMAN: Aren't you going to be starting
7 your case tomorrow morning?

8 MR. NAFTALIS: Well, depends on how long we
9 sit.

10 THE COURT: Can't Mr. Ruffels call someone and
11 say, "Look in my file and pull out the logs."

12 MR. NEWMAN: I will even take it tomorrow.

13 MR. NAFTALIS: All right. If we can give them
14 tomorrow morning, the Government --

15 MR. NEWMAN: I may not want them.

16 THE COURT: See if you can get them here during
17 the lunch hour. If not, bring them in tomorrow.

18 MR. NAFTALIS: Thank you.

19 THE COURT: All right.

20 (Luncheon recess taken.)
21
22
23
24
25

2:15 P.M.

(Whereupon, the jury entered the courtroom.)

MR. NAFTALIS: Mr. DiPalma, just wait outside.

(Whereupon, the witness DiPalma retired from the courtroom.)

THE COURT: Mr. Naftalis.

MR. NAFTALIS: Yes, your Honor.

Thank you very much, sir.

F R A N K D i P A L M A, having been previously
duly sworn, testified further as follows:

MR. NEWMAN: Your Honor, excuse me for just
a minute, please.

CROSS-EXAMINATION

BY MR. LA ROSSA (Cont'd):

Q Mr. DiPalma, when for the first time did you
meet Mr. Riccardi?

A The date, I can't tell you. The month, I
think I can remember. Around the summertime. On a Satur-
day.

Q Of what year?

A Could have been '71 or '72. I am not sure.

Q Yesterday you told us, Mr. DiPalma, that you
had an outstanding loan to National City Bank; is that
correct?

1
2 A Yes, sir.

3 Q How much was that loan?

4 A Around, say, \$5,000.

5 Q When did you make that loan?

6 A I made them in parts.

7 Q When did you begin?

8 A Could have been '70, '71. 1970.

9 Q When did you end that -- making that loan of
10 \$5,000? Do you understand my question?

11 A When did I end paying that loan?

12 Q No. Making. You said you made it in parts.

13 A Do you mean borrow?

14 Q Yes.

15 A Is that right?

16 Q Yes.

17 A I don't remember that one, when I stopped
18 borrowing from them.

19 Q Can you give us an approximation?

20 A No, I can't.

21 Q Was it before this Saturday in the summertime
22 when you met Ciro Riccardi?

23 A Like I said, it could have been a part. Not a
24 whole. In other words, I could have borrowed a part, but I
25 still owed the money.

Q Do you still owe them money now?

A No.

Q You paid them back?

A No, sir.

Q How about First National City Bank?

A That's what you just said, First National City Bank. Didn't you?

Q I'm sorry. I did.

How about Chase Manhattan Bank?

A Chase Manhattan?

Q Did you ever borrow any money from them?

A Yes, sir.

Q How much?

A Oh, I think -- let's see. Roughly about -- like -- again, I'm not sure. It may be two thousand. It may be eighteen hundred. Somewhere around there.

Q When you went to the First National City Bank and borrowed the \$5,000, did they ask you why you wanted the loan?

A You said five thousand. I said to you parts of five thousand. You're saying --

Q Tell us what that -- what does --

A Well, borrowing eight hundred one time, and borrowing another eight hundred another, possibly twelve

1
2 hundred another time, and then possibly borrowing eighteen
3 hundred the last time.

4 Q Did they ask you why you wanted the loan?

5 A Yes. I assume they did.

6 Q What did you tell them?

7 A I just need the money.

8 Q Did they ask you what the purpose for the loan
9 was?

10 A I think they did.

11 Q What did you tell them?

12 A What did I tell them? I told them a lot of
13 things. But I just got the loan. That's all I know.

14 Q Tell us what you told them.

15 I don't remember what I told them.

16 Q Can you tell us any one thing that you told
17 them?

18 A No.

19 Q Did you just make things up to get the money?

20 A Pardon me?

21 Q Would you just make up reasons to get the money?

22 A I don't know. Maybe. If it meant getting the
23 money.

24 Q Can you give me any one reason that you gave
25

to the First National City Bank for obtaining any loan from them?

A Could I give you any reason?

Q That you gave them.

A No. I don't know if I could give -- could give you a reason.

Q You can't remember?

A I can't. I can remember off and on. In other words, I could remember I could have said I needed to go away. I could have said --

Q Would it have been true?

A Pardon me?

Q Would that have been true?

A I don't know if it could have been true. It might not have been and it might have.

Q Would you make it up to get the money? Say that you wanted to take a trip?

A I don't know. Could have.

Q Did you?

A I am not sure if I did or not. Because I just told you, I wasn't sure if I said that to them.

Q But, Mr. DiPalma, you know you did make up reasons for the banks on various occasions which weren't true?

A Most probably could have been so.

Q Is that right?

A Could have been.

Q Let me ask you this. When you sign those bank statements, do you recall a statement at the bottom on any one of the applications that you signed? Were you told -- where it would say to you that obtaining credit by use of a false statement is a Federal crime? Do you ever recall seeing that?

A I think so.

Q As you sit there now, you know you did fill out applications with false statements to obtain loans; is that right?

A Like I said, I wasn't sure what I told them.

Q Well, if you told them something that wasn't true, that would have been a false statement; isn't that true? Right?

A If you say -- specific personal loan, you don't say what you need it for.

Q How many times have you told them, the bank, what you needed it for, Mr. DiPalma?

A You just say, personal loan.

Q Is that what you wrote on every application --

A Mostly.

Q (continuing) -- that you ever submitted?

A I could believe mostly every application I wrote

2 was "personal." On every slip that -- you know, the bank
3 gives you. As a matter of fact, I don't even fill it out.
4 The guy filled it out for me.

5 Q Did he ask you questions?

6 A Sometimes. If you know the guy -- you know, if
7 you walk in and they see you make payments on your loans, and
8 your payments are up --

9 Q Who did you know in the First National City Bank?

10 A By name, I don't remember.

11 Q You remember him by face, though?

12 A Yes.

13 Q What branch of First National City Bank did you
14 deal with?

15 A Two.

16 Q Where?

17 A One on Avenue X, and the other at Kings Highway,
18 I believe.

19 Q How many loans in all did you take from the
20 First National City Bank?

21 A Two.

22 Q Were the loans used for gambling?

23 A The money was.

24 Q That's what I mean.

25 A Yes, sir.

Q The proceeds of the loan.

A Most of it.

Q On any loan that you took from the First National City, did you state either, one, that you were buying furniture?

A I am not sure.

Q Can you tell me right now, under Oath, whether or not you ever said to the First National City Bank on a bank application that the purpose of the loan was to buy furniture?

A I couldn't answer that. I couldn't answer that because I'm not sure.

Q Did you buy furniture in 1971 or 1972?

A No.

Q So if you put down on an application to the First--

MR. NAFTALIS: I object to this question. The witness already testified he doesn't know.

THE COURT: Well, yes. It's a hypothetical on cross-examination.

MR. LA ROSSA: I must ask him whether or not that would have been true if he wrote it down.

THE COURT: Not unless you have some substantiation.

Q Why don't you stop and think about it. Did you put down on an application for the First National City that you were buying furniture?

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2 A Maybe I can make it easy this way. I filed for
3 bankruptcy, personal bankruptcy. And I went in front of a
4 Judge. And I had a lawyer. And they found no discrepancies
5 in my case.

6 MR. LA ROSSA: I move to strike out that answer.

7 THE COURT: I don't know. I think you asked for
8 it.

9 MR. LA ROSSA: I asked him one question. Did
10 you ever put down in an application that you -- the
11 purpose of the loan was to purchase furniture.

12 THE COURT: He says he doesn't remember. And
13 you persisted in it. And he's giving the answer, his
14 idea of what the facts are.

15 MR. LA ROSSA: I move to strike that.

16 THE COURT: Motion denied.

17 Q Can you give me any one reason that you put down
18 for any loan from the First National City Bank?

19 A I said once and 100 times again, I am not sure,
20 because I went to so many places. And I can't tell you what
21 I put down in the applications.

22 Q When did you borrow from the Chase Manhattan
23 Bank?

24 A I am not sure, your Honor. I am not sure. I
25 keep telling you, I am not sure when exactly -- when the year

1
2 -- If I told you 1972, it could be 1971. And I am not sure
3 if it was 1971.

4 Q Was it before that day in the summer time that
5 you remember on a Saturday that you remember with Mr. Riccardi?

6 A What? What do you mean?

7 Q Did you borrow the money from the Chase Manhattan
8 Bank before that day that you met Mr. Riccardi for the first
9 time?

10 A Yes. I borrowed with my wife. We went together
11 on a loan from Chase Manhattan.

12 Q So you know it was some time before you met Mr.
13 Riccardi?

14 A It was before.

15 Q Household Finance -- Withdraw that.

16 Can you tell us what the purpose of the loan was
17 to the Chase Manhattan Bank?

18 A What did you say? Household Finance?

19 Q No, Chase Manhattan.

20 A What about it?

21 Q Can you tell us what purpose you gave the bank
22 for borrowing that money?

23 A Establish credit. Because that was my first bank,
24 I believe.

25 Q Household Finance.

A Anybody can get it from them.

Q When did you borrow from Household Finance?

A I borrowed from Household Finance when I was around twenty years old.

Q How about during the 1970's?

A '70's? I could have. I could have renewed, because I always owed them.

Q Well, you were asked the question of who you owed yesterday on direct testimony in 1972, and you said Household Finance.

A Yes, I did.

Q So I am asking you now, when you remember that, when Mr. Naftalis asked you -- did you not?

A I remember the places I borrowed from.

Q Tell me when you borrowed from Household Finance.

A It could have been -- Like I said before, you see, when you say borrow, I told you that I established credit with Household Finance in the early -- and I always -- any time I wanted to go back, if I owed them money, I could renew it.

And now --

Q How many times -- I am sorry.

A I am sorry. Go right ahead.

Q How many times did you borrow from Household Finance after January 1st, 1970?

1
2 A I don't know. A few times, maybe. I am not
3 sure.

4 Q Did you ever borrow from Household Finance after
5 June, 1972?

6 A After June, '72? I'm not sure.

7 Q Did you ever borrow from Household Finance after
8 you met Mr. Riccardi?

9 A After? You mean after the incident? After what?

10 Q After you met him for the first time?

11 A I don't remember.

12 Q What is your best recollection?

13 A If I say, I don't remember, I don't remember.

14 Q No idea? You have no idea?

15 A I have ideas, but I'm a little confused because
16 like I said, I know how many companies I borrowed money from.
17 And maybe I can say Beneficial. I could say Household Finance.
18 I could say Commercial Credit. I could say the Municipal
19 Credit Union, First National, Bankers Trust.

20 And did I leave anything out? Yes, Chase Man-
21 hattan.

22 Anybody else? I don't know.

23 Now, when I borrowed this money, I borrowed it
24 from Peter to pay Paul. And in that area, like. In other
25 words, it would be strips.

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202

DiPalma - cross/LaRossa

Q Do you remember any purpose you gave for any loans you made through Beneficial Fianncce?

A Once again, I don't know how many purposes I put down on those papers. I could have put down "personal." I could have put down "furniture." I could have put down numerous amounts. But I'm not sure what I put down.

Q Put down what?

A I could have put down a lot of things. I am not sure what I put down.

Q Did you ever put down that you wanted to take a vacation?

A Once again, you're asking me the same thing. I just told you, I don't know.

R2 fls 16

(continued on next page.)

Q Commercial Credit Union, when did you borrow from them?

A That is not a credit union. That's a finance company. Commercial Credit. Borrowed from them?

Q Credit Union.

A The Municipal Credit Union.

Q Sir, this is what you told us yesterday. I am reading, Commercial Credit Union.

A Commercial Credit is a finance company. And now it's I think American Finance took it over from what I read in the papers.

Q Did you borrow money from them?

A Yes. I borrowed from the -- it's called the 3 C's. Commercial Credit Corporation.

Q Can you tell us when you borrowed from them?

A I borrowed -- I don't remember. I borrowed from them maybe in 1970.

Q How much did you borrow from them?

A Oh, maybe around \$1,000 to \$1,400.

Q Do you remember the purpose of the loan?

A Could have been personal again.

Q Do you remember what you told Commercial Credit the purpose of the loan was?

A Personal.

Q Did you pay that loan back?

A No, sir.

Q Did you pay the Beneficial Finance loan back?

A I just explained to you I was on -- was on personal bankruptcy. I didn't have to pay them back.

Q I didn't ask you that. I asked you whether you paid them back.

A I told you, no.

Q Household Finance?

A No.

Q Chase Manhattan?

A No.

Q How about Bankers Trust?

A No.

Q Did you ever borrow money from them?

A Yes.

Q When?

A In the '70's.

Q Early 1970?

A No. I don't know. It had to be past '71 or '72. It had to be past that.

Q Was it before or after the first time you met Zero Riccardi?

A I'm not sure about that. It could have been --

1
2 probably that could have been when I met him.

3 Q How much did you borrow from Bankers Trust?

4 A 22. Possibly 23.

5 Q Hundred?

6 A Yes.

7 Q Can you tell us what the purpose of that loan
8 was for, what you told Bankers Trust the purpose was?

9 A I don't know. It could have been personal.

10 Q You don't have any recollection?

11 A Like I said, I'm not sure what I said.

12 Q Any other financial institutions that you
13 borrowed from in the early 70's?

14 A Beneficial.

15 Q Anybody else?

16 A Family Finance.

17 Q How much did you borrow from them?

18 A Around 1,400 I think.

19 Q When was that?

20 A I don't remember the time, the date.

21 Q Was it before the date you first met Leo
22 Riccardi?

23 A I met him then. I met him then when that loan
24 was on.

25 Q I'm sorry.

1
2 A I met him when that loan was taken. I knew him
3 when that loan I think was taken. Most of those loans were
4 renewed in parts again. Most of --

5 Q Do you remember the purpose for that loan?

6 MR. NAFTALIS: Will you please let Mr. DiPalma
7 finish that answer.

8 THE COURT: The answer -- you added -- you said,
9 most of something --

10 THE WITNESS: Yes, your Honor. I am trying to
11 say that most of the money that I borrowed were in
12 parts.

13 THE COURT: Renewals?

14 THE WITNESS: Pardon me?

15 THE COURT: Were they renewals?

16 THE WITNESS: Yes, renewals. It's hard for me
17 to remember what I asked for. You know, if I said
18 personal or otherwise, I'm not sure. And that's why
19 I was trying to say before that I went and claimed
20 personal bankruptcy. And they checked all the papers
21 out and they found no fraud.

22 MR. LA ROSSA: I move to strike that out.

23 THE WITNESS: I didn't put down --

24 MR. LA ROSSA: It is not responsive to any
25 question I asked him.

THE COURT: Strike it out.

Most of them were renewals.

Q Mr. DiPalma, can you, sitting there, tell us on all of the applications you prepared for every one of these banks what you put down on any one application at any time for the purpose of the loan?

A Like I said, it could have been personal. It could have been something else. But I am not sure.

Q Can you tell us with any degree of certainty on any loan application you prepared what the purpose of the loan was, without remembering what bank, which bank it was, without remembering what time it was?

A I don't remember.

Q Can't do it?

A No, I can't.

Q Do you recall that the first time you met Mr. Riccardi was a Saturday?

A That's right.

Q Where did you meet him for the first time?

A Right outside in front of a candy store across the street from the Chinese restaurant.

Q Where?

THE COURT: Was it in Poughkeepsie or where?

THE WITNESS: No, it's Brooklyn. About 7 or 8

1
2 blocks away from the yard where I used to work.

3 Q Do you remember what street it was on?

4 A I don't remember the street any more.

5 Q Was this in a luncheonette?

6 A It was a luncheonette right here. Across the
7 street is a Chinese restaurant.

8 Q Do you know who owned that luncheonette?

9 A No.

10 Q Have you ever been back to that luncheonette?

11 A Have I ever been back? No.

12 Q Was Mr. Riccardi alone or with someone else?

13 A Alone.

14 Q Were you alone or with someone else?

15 A I was with -- let's see. Was I by myself the
16 first time? No, I was with a friend of mine who took me over
17 there.

18 Q Who?

19 A Patty.

20 Q Patty who?

21 A McKuehn.

22 Q McKuehn?

23 A Yes.

24 Q Is he a good friend of yours?

25 A Was.

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Q Is he still in Brooklyn? Do you know?

A I think so. I don't know.

Q Did he introduce you to Mr. Riccardi?

A Yes.

Q So the three of you were together?

A Yes.

Q Everything that Mr. Riccardi said to you was said in front of your friend, Patty McKuehn?

A No.

Q Everything you said to Mr. Riccardi was in front of your friend, Patty McKuehn?

A Just to go -- if you wanted the money, to come back the following week. That's all.

Q Did Mr. McKuehn go somewhere?

A Pardon me?

Q Did Mr. McKuehn leave?

A That was all that was said. He introduced me. And then he said to me -- and then he stood in the car. And all I know is that he said -- Zero said to me to come back next week.

Q Mr. DiPalma, was Mr. McKuehn present when you and Mr. Riccardi allegedly have this conversation?

A He might have been.

Q You mean you can't remember that?

1
2 A I think he was. But he might have been. He
3 might not. I think he was. He was in his car.

4 Q Whose car?

5 A In Patty's car where we spoke.

6 Q So he would have heard the same thing you heard;
7 is that right?

8 A I think so.

9 Q Any question about that?

10 A I don't think so.

11 Q Now, tell me and tell the jury what Mr.
12 Riccardi said to you, what you said to him, and what Mr.
13 McKuehn said.

14 A Just told -- we talked about -- I talked about
15 borrowing \$1,000. And I told him that I needed it for my
16 business. By my business I mean I was trying to have a bank.

17 Q Your business being bookmaking?

18 A Yes. And he told me to come back and see him
19 the following week, which was on a Friday I believe.

20 Q Is that all that was said?

21 A That was all.

22 Q Are you sure?

23 A That's right.

24 Q Can't think of one other word that was said?

25 A Can't think of any other word that was said.

1

2

Oh, you mean about the payments?

3

4

5

6

7

Q About everything. I want every word that Mr. Riccardi said to you, everything you said, and everything that Mr. McKuehn said. I don't expect you to remember the exact words. I'm talking about the substance of what was said.

8

9

10

A The substance -- I am trying to tell you that he said to me to come back the following week and I could have the money.

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Q That's all that was said?

A That's what I can remember.

Q There was no discussion about payments?

A Yes. That was the discussion.

Q Tell us what was said.

A It was \$50 a week.

Q Is this what he said to you?

A Yes.

Q Tell us what he said to you.

A \$50 a week vig.

Q Those are the words he used?

A Or 1,050.

Q Or 1,050. Is that what he said?

A Yes.

Q Do you know what he meant?

1
2 A Yes.

3 Q You knew what he meant at that time? You had
4 heard that before?

5 A Pardon me?

6 Q You had heard that type of expression before,
7 hadn't you?

8 A Yes.

9 Q You knew well what that meant before you ever
10 went there, right?

11 A That's right.

12 Q What else was said?

13 A That's all I could remember. Come back and
14 get the money.

15 Q Was there any talk about when the payments
16 would be made?

17 A Every Friday.

18 Q Was there any talk about where the payments
19 would be made?

20 A Yes.

21 Q Where?

22 A The payments would be made either at the
23 luncheonette or the bicycle shop.

24 Q Do you remember testifying before a grand jury
25 on June 13, 1972?

2

A I don't know.

3

Q Don't remember?

4

A I went a few times to the grand jury.

5

MR. LA ROSSA: Has this been marked already?

6

MR. NAFTALIS: Yes, it has.

7

MR. LA ROSSA: Could you give me the marking

8

number so I can refer to it, please?

9

Q I show you what has been marked 3500-10. I ask

10

you to look at it. Read it to yourself. Tell me whether that

11

refreshes your recollection that you were before a grand jury

12

on June 13, 1972?

13

A Are you talking about this first page?

14

Q Just read as much as you have to and see if it

15

refreshes your recollection that you were before the grand

16

jury on that day.

17

Does the first two pages refresh your recollection that

18

you were before the grand jury on that day?

19

A Excuse me.

20

21

(Continued next page.)

22

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24

25

HS/JC
2PM/1

214

DiPalma-cross/LaRossa

1
2 Q Does that refresh your recollection that you
3 were before the grand jury on that day?

4 Do you now remember your appearance, is what I am
5 saying?

6 A I remember appearing numerous amounts of times,
7 but I don't remember the dates. And like I said I am not
8 sure.

9 Q You see a date on the front of that?

10 A Yes.

11 Q Can we assume that is the proper date for the
12 subject of our inquiry?

13 A I would think so.

14 Q When you went before that grand jury, you were
15 all alone, were you not?

16 A I think so.

17 Q And there were some people sitting in a room,
18 grand jurors; is that correct?

19 A Yes.

20 Q And Mr. Murphy from the United States Attorney's
21 office, Mr. Naftalis's counterpart, was with you, was he not?

22 A Yes.

23 Q Did he prepare you for this appearance before
24 the grand jury?

25 A What do you mean "prepare"?

Q Did he ask you questions before you went into that grand jury?

A He didn't say anything.

You are going to appear in the grand jury.

Q He just put you in and asked you questions?

A Yes.

Q And did he tell you before you went in that you were going to take an oath -- did he tell you that before you went into that grand jury?

A Yes.

Q Do you remember the oath that you took before that grand jury was exactly the same oath that you took here, do you remember?

A I think so.

Q Do you believe if you didn't tell the truth in the grand jury, you would be committing a crime?

A I don't know -- I don't know.

Q Do you believe if you didn't tell the truth here that you would be committing a crime?

A I believe so.

Q Is there any question in your mind about that?

A There is no question in my mind.

Q Would you open that to page 4, please.

All the way down to the bottom of the page. Will you

3 1
2 read with me and tell me if you were asked this question and
3 did you give this answer:

4 "Question: How much did you intend to borrow?

5 "Answer: \$1,000."

6 Did you make that answer to that question?

7 A I might have, yes.

8 Q Did you?

9 A Yes, if I said it here it must be right.

10 Q Was it true?

11 A How much did I intend to borrow?

12 Q Yes.

13 A \$1,000.

14 Q So that's a true answer, right?

15 A Yes.

16 Q Then going to the next question:

17 "Question: What were the terms of the repayment of
18 that money?

19 "Answer: \$50 a week vig."

20 Did you make that answer to that question?

21 A Yes.

22 Q The next question:

23 "Question: What did you understand "vig" to mean at
24 that time?

25 "Answer: At that time I never heard of vig."

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Did you make that answer to that question?

A I might have -- yes, I did.

Q Did you or did you not?

A Yes, I did.

Q Was it true?

A Was that true what I said there?

Q Yes.

A No.

Q So you purposely lied to the grand jury?

A I didn't purposely lie.

Q Did you lie?

A I was very nervous at the time I was brought in that day and I never went in front of a grand jury before and I didn't have my head together that day. If this is June 13, 1972 -- isn't this the time when I went through the proceedings of going through the whole bit of having tapes, and having all this done? I went to the grand jury and I was very nervous because of one important thing and one important thing only --

MR. LA ROSSA: Your Honor, I would like the witness to stop now.

THE COURT: Yes, stop.

Q Did you intend to mislead the grand jury with that?

- 5 1
- 2 A I did not intend to mislead anyone.
- 3 Q So what you are telling us, it was an honest
- 4 mistake?
- 5 A Yes, it was an honest mistake.
- 6 Q Yet you knew what "vig" meant all your life?
- 7 A I knew what "vig" meant.
- 8 Q Any question about it?
- 9 A No, there is no question.
- 10 Q The reason you knew what vig meant so well was
- 11 because you have lent out money for vig payments, haven't
- 12 you?
- 13 A No, sir.
- 14 Q Never did?
- 15 A No, I never lent a dime for vig payments or
- 16 any kind of payments.
- 17 Q Did you ever lend a dime for any kind of pay-
- 18 ments?
- 19 A To lend 10¢ to somebody for interest?
- 20 Q Did you ever lend any money for interest?
- 21 A No, I did not.
- 22 Q Is that the end of the conversation with Mr.
- 23 Riccardi that day?
- 24 A I just went back the following day.
- 25 Q Is that the end of the conversation that every-

one spoke?

A Pardon me, I didn't hear that?

Q You told us what Mr. Riccardi said to you?

A Yes.

Q You told us that it would cost you \$50 a week
vig.

Was anything else said by him?

A To come and see him the following week.

Q Did Mr. McQuinn say anything?

A Not that I remember now.

Q Did you say anything?

A I said that I would.

Q When did you go see him again?

A On a Monday -- on a Friday I believe the
following week.

Q Would you tell us what year that was?

A No, I can't.

Q Can you tell us what month that was?

A Summertime -- early summer.

Q Now, you know, do you not, Mr. DiPalma, as you
just said a moment ago you had all these problems in June
of 1972. Was it before that?

A When?

Q When you met Mr. Riccardi for the first time?

7 1 A When I met him for the first time, it was
2
3 around May -- I said the beginning of the summer.

4 Q Was it the same year that you wore the body
5 recorder?

6 A No.

7 Q Was it the year before?

8 A I don't remember. It might have been a year
9 after.

10 Q A year after you wore the body recorder?

11 A It might have been.

12 Q That you met Mr. Riccardi for the first time?

13 A I know when I met him for the first time, but
14 I am not sure about the recorder and I am not sure about
15 what date -- the dates I wore these things or the dates that
16 I appeared in the grand jury. I can't remember those things.

17 Q You have seen this, if I may approach the
18 witness, and you have referred to it as a June date in 1972
19 when you wore that recorder (indicating)?

20 A Yes.

21 Q What date is on there, June 2, 1972?

22 A Yes.

23 Q When did you meet Mr. Riccardi for the first
24 time? Was it in May of 1972?

25 A It has to be the previous year.

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Q May of 1971?

A Yes.

Q It couldn't have been May of 1970, could it?

A I don't think so.

Q So your best recollection is that this occurred
in May of 1971?

A I think so.

Q O.K.

You met him the next week where?

A The luncheonette.

Q What luncheonette?

A The luncheonette across the street from the
Chinese restaurant.

Q The same one you met him in the first time?

A The first time I told you that I met him in a
car. The second time I told you I met him to pick up the
money in a candy store and luncheonette.

Q Didn't you just tell us a few moments ago that
the first time you met Mr. Riccardi was in front of a
luncheonette?

A In a car.

Q Across the street from a Chinese restaurant?

A And I told you I was driven there.

Q Is that the same luncheonette?

A Yes.

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DiPalma - cross - LaRossa

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CROSS-EXAMINATION

BY MR. LA ROSSA (Cont'd):

Q Did you meet him in the luncheonette or outside?

A The ~~first~~ time or the second time?

Q The second time.

A I met him inside.

Q Tell us about the luncheonette. Can you tell us where it was?

A Again, I tell you, the streets -- I say it's around eight blocks away from the shop -- somewhere around eight or six blocks away from the Coney Island barn.

Q Have you been to this luncheonette after this second meeting with Mr. Riccardi?

A Have I ever been there a second time?

Q After that.

A Yes, to make payments.

Q You mean you were there every week?

A I was there every week.

Q How many weeks did you go to that luncheonette? How many times?

THE COURT: While he is thinking about that, would you step up, please?

(The following occurred at side-bar.)

DiPalma - cross - LaRossa

THE COURT: I don't want to infer. I notice two or three individuals sitting in the Court. I saw Mr. Fischetti walk in and walk out.

Do you have witnesses sitting back there?

MR. LA ROSSA: We had.

THE COURT: I don't think there is anybody left.

MR. NEWMAN: One fellow left with glasses.

MR. NAFTALIS: The one that just walked in?

MR. NEWMAN: He is not the witness.

MR. LA ROSSA: He has nothing to do with this.

MR. NEWMAN: Before he started his cross-examination, Riccardi nudged me and said one of the witnesses were sitting in the Courtroom.

THE COURT: I just wanted to make sure. I just wanted to know if you knew.

MR. NEWMAN: I would imagine that Mr. Fischetti was walking out with a paying client.

MR. LA ROSSA: May I, on something else?

Judge Mishler contact you about this?

THE COURT: Yes. I told him I would let you off at 4:30.

MR. LA ROSSA: I didn't care if it was 5:00.

(The following occurred in open Court.)

3 DiPalma - cross - LaRossa

BY MR. LA ROSSA:

Q How many times were you in that luncheonette?

A Times -- talking about times as far as numbers are concerned?

Q Yes, sir.

A Impossible for me to tell you that.

Q More than 10?

A Impossible for me to tell you that.

Q Less than 10?

A Had to be much more for me not to know the number.

Q More than 20?

A Once again, I don't know how many times.

Q Did you go there every week after you made this thousand dollar loan?

A Did I go every Friday?

Q Yes.

A I recall one -- if you mind if I say this -- this being you were on when I came -- the following week I had to make the first payment, and I didn't make it because he wasn't there, and he called me up Saturday at my house.

Q You went to the luncheonette?

A I went but he wasn't there.

Q I asked you did you go to the luncheonette

4
every week?

A Yes, I went there.

Q Did you go every week for the whole year?

A I went there and the bicycle shop.

Q How many times did you to go the bicycle shops?

A Numerous amounts of times.

Q Did you live in Brooklyn at this time?

A Yes.

Q How far did you live from this luncheonette?

A Well, at the time, about a couple of miles.

Q Did you grow up in that section?

A No.

Q Did you grow up in Brooklyn?

A Yes, sir.

Q Did you tell us that it was seven or eight
blocks from the place where you worked?

A Yes.

Q How long have you worked at that place?

A About two years.

Q Are you telling us now that you can't tell us
the street that it's on?

A No, sir, I can't. I am telling you that I
can't.

Q Did you tell us that Mr. Riccardi has a goatee?

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DiPalma - cross - LaRossa

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A I meant a beard like that.

Q Tell us what you mean by a goatee?

A I didn't mean a goatee down here. I mis -- I misinterpreted my way of saying it. I meant you know the mustache coming down (indicating).

Q You meant the what?

A The mustache.

Q After you finished testifying on direct, did you have a conversation with any of the FBI agents who were involved in this case?

A After I did what, sir?

Q After you testified here the other day.

A Yes.

Q Did they tell you that this picture had been put into evidence, Government's Exhibit 2?

(Shown to witness.)

A I don't remember that.

Q Have you ever seen that picture?

A Sure.

Q Did they remind you that he didn't have a goatee?

A I don't remember them telling me anything about that. Reminding me about having a goatee or not.

Q Did you believe when you testified here the

6 DiPalma - cross - LaRossa

other day and said that Mr. Riccardi had a goatee that a goatee meant a mustache?

A Do I believe that? I said that when I came on the stand. It was yesterday, and I was nervous. I did say -- say the same thing -- I meant mustache. I didn't mean goatee as far as goatee from the bottom.

Q Didn't you tell us that you looked out from a side window of your house?

A No, the first front window.

Q The first front or side window or whatever, and that you were in such a position that you could see Mr. Riccardi and you knew it was him because you recognized his goatee?

A Like I said before, I could have said mustache.

Q That's because you were nervous?

A Why not?

Q How many times have you paid off a hit on the numbers?

A I never paid off on any hit on any numbers because like I said before, I never picked up numbers.

Q You never took numbers?

A No.

Q Are you telling us now that you never took a number?

7 DiPalma - cross - LaRossa

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2 A I didn't take a number to pay off a hit. I just
3 took the -- in other words, a guy once put 10¢ on a number.
4 I didn't take no dollar numbers. I took one or two numbers.
5 I was -- I never got involved in that because I knew for
6 one dollar you could lose everything.

7 Q You could lose a thousand?

8 A No, \$500.

9 Q Did you play the numbers?

10 A Yes, I did.

11 Q Didn't you pick up money on numbers at the
12 Transit Authority and lay it off --

13 A Laid what off?

14 Q Laid the numbers -- monies off.

15 A I never laid any money off in the Transit
16 Authority with anybody. I bet numbers -- I bet numbers.

17 Q What was the largest amount you ever took on a
18 number?

19 A I took no more than like 50 cents. I don't
20 remember how much could have been taken -- if I took one or
21 two, it was a lot. I never bothered with numbers.

22 Q You certainly didn't take a number from someone
23 every day?

24 A I bet numbers every day.

25 Q No, no, took.

8 DiPalma - cross - LaRossa

A No, I wouldn't take it. Why would I have to take any?

Q And you never took sports action from anyone in that Transit Authority, did you?

A Do you mean football games and basketball and what-not?

Q What do you mean?

A I don't know what you are talking about.

If it was the summer, you can't bet basketball. You can only bet basketball -- no, I didn't take basketball bets off anybody.

If it was baseball, I bet people straight there. I will bet you \$20 on the game. I will bet \$40. I can't say -- I made the bets personally.

Q You bet between yourself?

A Yes, is there any law against betting on games?

Q How many bets would you make on basketball?

A How many bets would I make? Let's talk about the season.

Q On any given night, would you say hundreds of dollars?

A I could have bet that.

Q \$200?

A No.

9 DiPalma - cross - LaRossa

Q \$150?

A \$50, \$150.

Q Tell the ladies and gentlemen of the Jury what was the most money you made in 1971 and '72 working for the Transit Authority.

I am talking about take-home pay.

A About \$150 a week, I guess.

Q But you made no money from bookmaking?

A I made absolutely nothing from bookmaking.

Q Did you ever tell anybody that you needed money in a hurry on that May day in 1972, when you met Mr. Riccardi for the first time?

A Did I ever tell anybody besides Riccardi or just Riccardi? What do you mean?

Q Anybody.

A I might have. I don't know.

Q Did you ever tell the agents?

A The agents?

Q Yes.

A Oh, I told the agents what I did, I think I did.

Q Did you tell them that you needed the money in a hurry?

A I don't know if I told them that I needed it

DiPalma -- cross - LaRossa

10

in a hurry.

Q Did you need the money in a hurry?

A I think -- yes, I did.

Q For what?

A I owed out about around, say, \$200 on the job.

Q For what?

A What?

Q For what?

A Borrowing. I borrowed a few hundred here and there.

Q How much?

A About \$200.

Q So then, you needed \$200, didn't you?

A And I wanted to have \$200 back.

Q Then you needed \$400; right? What was the other \$600 for?

A To make payments with so I wouldn't get strapped.

Q Payments to who?

A Mr. Riccardi.

Q You mean you wanted \$600 to pay Mr. Riccardi back before you borrowed the money?

A I figured if I could hold on to the money, I could maybe make a hit and then I would pay the whole thousand fifty back.

Q Did you ever say, "I had to borrow the money quickly"?

A I don't know if I said I had to borrow the money quickly.

Q Would you open the Grand Jury testimony that you have before you to page 2 and there are lined numbers on the side.

When you get to line 15, were you asked this question and did you give this answer:

"Question: I want you to go back in your mind a year ago. Did there come a time in May of 1971, when you had to borrow some money quickly?

"Answer: Yes."

Did you give that answer to that question?

A Yes.

Q Was it true?

A I don't know if it was true. I just said -- he asked me that question quickly and I said yes. I didn't say quickly myself, that question was given to me and I assume that I said yes, that I needed the money.

Q If a U. S. attorney asks you the question quickly and you assume that is what he wants, you will say yes?

MR. NAFTALIS: Objection.

12 DiPalma - cross - LaRossa

THE COURT: Sustained.

Q Is it correct, Mr. DiPalma, that you will say yes, whether it is true or not, because you know that is what the Government wants?

A I am -- I can't say nothing about what the Government wants. I only know what I thought.

If I said yes, then I said yes. If he asked me that question and I guess I said yes, quickly, I am not sure about. Maybe I did need it quickly.

Q But you don't remember now?

A It's 1972. It's not easy to remember.

SF fols.

(Continued on next page.)

CROSS-EXAMINATION

BY MR. LA ROSSA: (Cont'd.)

Q Did you need it quickly or not? You don't recall?

A I don't recall. I may have needed it quickly.

Could have used it on Page -- like I just explained why I needed the money --

Q You just told us a moment ago that you didn't know what the government wanted. I think those were the words you used. Did anyone ever tell you what they wanted from the government?

A Anybody from the government tell me what they wanted?

Q Yes, evidence in this case?

A Not that I can remember.

Q Do you remember when they put that recording device out?

A Yes.

Q Did anybody tell you that it would help if you got some statements out of Mr. Riccardi that sounded like threats?

A No, no.

Q Are you sure of that?

A Yes, I am sure of it.

Q If someone said that to you, you would -- would

1 2

2 you believe that was something that they wanted you to do?

3 A If they did ask me that question?

4 Q Yes, if one of the agents or one of the Assistant
5 United States Attorneys did.6 A They didn't ask me that question. They didn't
7 say nothing to me like that.8 Q If Agent Ruffels testified here today that that
9 is what he said to you, that would be a lie, wouldn't it?10 A I don't know if he said that to me or not. I
11 was putting on that thing and I was very, very nervous and it
12 was very hard -- anybody under those circumstances --

13 Q Mr. DiPalma, would you think for a minute --

14 MR. NAFTALIS: I would like the witness to
15 finish the answer.

16 THE COURT: Yes.

17 A Like I said before, anybody under those cir-
18 cumstances that did what I did, any normal person would be
19 nervous and would tend to forget what was said and what was
20 I was supposed to do.21 MR. LA ROSSA: Your Honor wants me to let him
22 finish?

23 THE COURT: You asked him a question.

24 MR. LA ROSSA: Do you remember what the ques-
25 tion was, sir?

2 THE COURT: Go ahead.

3 MR. LA ROSSA: I move to strike that answer.
4 It's absolutely not responsive to the question.

5 THE COURT: Motion denied.

6 BY MR. LA ROSSA:

7 Q Did Mr. Ruffels tell you when he hooked that
8 machine up on you that it would help if you got some threats
9 out of Ciro Riccardi?

10 A No, sir, and I know what Mr. Ruffels told me,
11 not to provoke the man, not to provoke.

12 Q Is that what he said?

13 A Not to provoke, yes.

14 Q In other words, don't get him angry?

15 A Yes, because they feared my life.

16 Q So what I just asked you would be the opposite
17 of that?

18 A I guess so if that's what you're asking.

19 THE WITNESS: Your Honor, may I have a drink of
20 water?

21 THE COURT: Yes.

22 Mr. LaRossa, while we have that brief recess,
23 would you pull the lectern back a little?

24 MR. LA ROSSA: Surely. Is that all right?

25 THE COURT: Yes.

1 4
2 BY MR. LA ROSSA:

3 Q Do you remember the day that they hooked this
4 machine up on -- I don't mean the date. Do you remember the
5 happening?

6 A Yes.

7 Q Who put it on you?

8 A The FBI.

9 Q Who?

10 A An agent.

11 Q Was it Mr. Ruffels?

12 A No, sir.

13 Q Was he present?

14 A Yes, sir.

15 Q Did it have an off button?

16 A No, sir.

17 Q It didn't have? Did they tell you not to put
18 it on or shut it off or try to?

19 A No.

20 Q Did they tell you not to turn it?

21 A They just hooked it on me.

22 Q Did they tell you anything about how to use it?

23 A There was nothing to use, they just put it on.

24 Q Did they tell you whether you should speak?

25 Normal voice or not?

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DiPalma-cross-LaRossa

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A Like I said, I don't -- the question you're asking me I am not sure, all I know they put the thing on my waist and there is one thing in the back here and I didn't have to touch the back and in the front was a mike and that's all I remember as far as them. I do remember once again that the agent Art Ruffels told me not to provoke him and two other FBI Agents told me not to provoke. Told me not to be nervous and just go there.

Q Okay. Did they tell you that you shouldn't go into a premises of any kind?

A Pardon me?

Q Did they tell you not to go into a building?

A They told me not to go into any house for fear they didn't -- they wanted me out in the open. Not to go into any house. That's what you asked me and that's what they told me.

Q The answer is yes?

A Not to go into any houses.

Q The answer is yes.

A Yes, but not for this.

Q Are you finished with your answer, Mr. DiPalma?

A Yes.

Q Did they tell you, Mr. DiPalma, that when you got to the first location, to walk to the next location?

2 A Did they -- I did that on my own.

3 Q You didn't want to go to that next location,
4 did you?

5 A Why not?

6 Q Didn't you want to wait at the first one?

7 A I didn't want to go in no cars or no houses.
8 I wanted to go to the next location by walking there.

9 Q Didn't you tell us yesterday when you testified
10 that when you got there you didn't want to go to the next
11 location, you wanted to wait at the first one and have Mr.
12 Riccardi brought to you?

13 A Yes, I think I might have -- I think I said.

14 Q Didn't you say that yesterday?

15 A If I said that I said that.

16 Q Is it true?

17 A Pardon me?

18 Q Was that true?

19 A I guess so if I said that.

20 Q And yet have you read this transcript dated
21 June 2nd, at any time?

22 A Did I read June 2nd?

23 Q Did you ever read this?

24 A Pardon me?

25 (Document handed to witness)

2 A I think I read it but I can't remember.

3 Q Why don't you read the first few pages to
4 yourself.

5 THE COURT: We will take a five minute recess
6 while he is reading the pages. Do not discuss the
7 case.

8 (Recess taken)

9

10 (Continued on next page.)

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MP/JC 1
3PM/1

2 (The jury is in the jury box.)

3 CROSS-EXAMINATION BY

4 MR. LA ROSSA CONTINUED:

5 Q Now, Mr. DiPalma, in May of 1972, you said
6 you met Mr. Riccardi on a Saturday, had a discussion, and
7 the following Friday you met him again, is that right?

8 A Yes.

9 Q At a luncheonette on a street which you don't
10 recall?

11 A I don't recall the street.

12 THE COURT: I think he said '71 but you said
13 '72.

14 MR. LA ROSSA: '71, I'm sorry. It's '71, yes.

15 Q The year before the June 1972 time that you --

16 A Yes.

17 Q May '71?

18 A Yes.

19 Q Who was present in the luncheonette on the
20 following Friday when you took the \$1,000?

21 A When I took the \$1,000, who was present besides
22 me?

23 Q Yes.

24 A Zero Riccardi.

25 Q Anyone else?

2 1
2 A No.
3 Q Are you calling him Zero or Ciro?
4 A I always called him Zero.
5 Q Z-e-r-o?
6 A Yes.
7 Q Did you hear other people call him Zero?
8 A No, I guess it's wrong but I always say it.
9 Q Just the two of you were present?
10 A Yes.
11 Q Did he give you the \$1,000?
12 A Yes.
13 Q Did you leave then?
14 A Did I leave then?
15 Q The \$1,000 --
16 A Yes.
17 Q Was this in the morning, the afternoon or the
18 evening?
19 A 3 o'clock.
20 Q Were you working then?
21 A No.
22 Q Were you working on that Friday at any time?
23 A 4 to 12.
24 Q Did you always work 4 to 12?
25 A No.

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Q Did you always work 4 to 12 during the year 1971?

A I don't remember. I may have worked 4 to 12, 10 to 6.

Q I think you told us you had to pay \$75 a week on that loan?

A \$50.

Q Will you tell us, if you can, please, when was the next time you saw Mr. Riccardi?

A About 3 or 4 months later. I seen him paying them --

Q Every time you've seen him I am talking about.

A I have seen him.

Q From the moment he gave you the \$1,000, when is the next time you physically laid eyes on Zero Riccardi again?

A To pay the \$50.

Q When?

A The following Friday.

Q Where?

A The candy store, the luncheonette.

Q The luncheonette?

A Yes.

Q When is the next time you saw him?

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A At the luncheonette.

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Q When?

4

A 3 o'clock in the afternoon on a Friday.

5

Q The following Friday?

6

A Yes.

7

Q Am I correct every Friday you paid him \$50?

8

A Yes.

9

Q For how many weeks?

10

A Months.

11

Q How many months?

12

A A couple of months, 3, 2 or 3 months.

13

Q 2 or 3 months?

14

A Yes.

15

Q So we are now talking about something between

16

July and August, is that correct?

17

A Yes.

18

Q Did you have another conversation with him at

19

that time?

20

A Every time I paid him I had a conversation.

21

Q Did you borrow more money from him?

22

A Yes.

23

Q When was that? July or August?

24

A I don't remember the month, but it had to be

25

3 months or 4 months later. Or maybe 2 months later that I

5

1

2

borrowed this money.

3

Q Was it summertime or winter time, spring?

4

A No, as a matter of fact it was summertime.

5

Q You remember that?

6

A Yes.

7

Q Is that also on a Friday or Saturday?

8

A It was a Friday.

9

Q Also at the luncheonette?

10

A Yes.

11

Q The same one the name you don't recall?

12

A Yes.

13

Q Or the street?

14

A I don't recall the name. I don't recall the

15

street.

16

Q Who else was present?

17

A Nobody.

18

Q And how much money did you get back?

19

A \$1,400.

20

Q How much?

21

A 14, 15. 15.

22

Q Is it 14 or 15?

23

A 15.

24

Q What made you think of 14 before?

25

A I wasn't sure if it was 14 or 15.

6

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Q You are sure it's 15?

A Yes.

Q Anything more than that?

A No.

Q You left with the \$1,500?

A Yes.

Q What did you do with the \$1,500?

A Well, let's put it this way, in terms of gambling, I blew it.

Q When, the next day?

A No.

Q How long did it take you to blow the \$1,500?

A About a month or two.

Q Month or two?

A I used that money to pay off on my loans that I had, to try to get up to date with them to look good with them so I could go back to them.

Q How much did you use for the loans?

A I don't remember exactly.

Q Approximately?

A Maybe a few hundred dollars on that.

Q You must have had a purpose for the \$1,500?

A I did have a purpose, but I believe that my purpose was for gambling and trying to get myself straight

1
2 with loan companies and personal friends I had borrowed from.

3 Q You used \$200 to pay off personal loans?

4 A I don't know if I used \$200 or \$500.

5 Q Somewhere between \$200 and \$500?

6 A Yes.

7 Q 30 days later you were broke again?

8 A No, about 2 months. It had to be more than a
9 month.

10 Q Two months?

11 A At least.

12 Q Did you use any of the excess of the money to
13 pay these payments every week?

14 A Yes.

15 Q How much of that did you pay? How much were
16 you paying a week then by the way?

17 A \$125.

18 Q Did you --

19 A I used a couple of dollars on there.

20 Q A couple of dollars?

21 A I meant, maybe 2, possibly 3 or 4 payment s
22 out of that money.

23 Q Somewhere between \$250 and \$500 of that money
24 was used as repayments?

25 A Yes.

Q Somewhere between \$200 and \$500 was used to pay off loans?

A Yes, that is right.

Q That means somewhere between \$1,050 and \$500 was used for gambling, is that right?

A Yes.

Q This loan was in July or August; when was the next time you were broke?

A (No response.)

Q Two months later?

A It might have been.

Q Did you make payments every week?

A Yes.

Q Let's assume for the sake of our discussion today you made 4 payments of \$125 each out of that \$1,500, o.k.? Where did you get the other \$125 a week for the other 4 weeks that you made payments?

A Well, I know I went down to banks. I got \$300 there.

Q \$300?

A A few here, a few there. I made individual loans. I made loans in parts. I made a few bets on baseball.

Now, I remember I bet the Chicago White Sox. The Chicago White Sox won 4 in a row from Friday and a double-

9

header on Sunday. They were underdogs. I won 4 in a row on that. That was in 1972.

Q 1972?

A I think they won 4 in a row.

Q The White Sox?

A Yes.

Q Do you remember whether they were home or away at that time?

A Who, the White Sox?

Q Yes.

A I think they were -- the White Sox were home.

Q Can you tell me any one pitcher that pitched for the White Sox, pitched for the White Sox on any one of those games?

A I think the pitchers are traded now.

Q Can you remember their names?

A Pardon me?

Q Can you remember their names?

A Tommy John.

Q Anybody else?

A They didn't win on pitching, they were underdogs. I don't remember. There weren't that many good pitchers.

Q Do you remember who they played?

10 1

2

A Yes. The White Sox?

3

Q Yes.

4

A Minnesota. Oh, they had Blyleven pitching on a Sunday.

6

Q That was the first game?

7

A I think that was --

8

Q Or the second game?

9

A I don't know.

10

Q Was it Minnesota?

11

A Minnesota played the 4 games.

12

Q Is there anything else you remember about that summer of '72?

14

A (No response.)

15

Q Do you remember any other betting sprees?

16

A Yes, I think I do. I think I lost -- no, I don't know if this right now, I am thinking because it happened to me, I lost 13 in a row on the Chicago Cubs.

19

Q Is that the summer of '72?

20

A I don't remember exactly the time, it was in the summer. 13 in a row. I lost on the Cubs 13 in a row. As a matter of fact, the 14th game I didn't bet it and they won.

23

24

Q Mr. DiPalma, how many payments of \$125 did you make?

25

DiPalma-cross/LaRossa

11

1
2 A I have to say around 6 months. From -- let's
3 put it like this, if I made anywhere from 3 to 6 months I
4 paid.

5 Q Is that the closest you can --

6 A Honest, that's the closest I can get. I can't
7 recall the time. You got to bear with me.

8 Q Anywhere from 3 to 6, you can't --

9 A How could you? All the things I did, I
10 couldn't.

11 Q But you can remember who pitched for the
12 White Sox?

13 A Yes, because I was a sports fan.

14 Q When was the last \$125 payment that you made?

15 A I think somewhere around either September or
16 October. Somewhere around there. In the fall or winter,
17 maybe.

18 Q That is about 2 months from the time you believe
19 you made the loan, right?

20 A It had to be longer than that. Like I said,
21 I can't remember the time. I t had to be longer.

22 Q You know you made the first loan in May?

23 A The first --

24 Q Yes.

25 A Yes, sometime in May. Before June.

1
2 Q You know you paid off that loan in 2 or 3
3 months?

4 A Yes.

5 Q That brings you to July or August, am I right?

6 A I think it was around November maybe.

7 Q All the weeks through September, October and
8 November that you paid that \$125 a week, did you give it
9 directly to Mr. Riccardi?

10 A Yes.

11 Q Where?

12 A Once again, excuse me. I either met him at
13 the bicycle shop or the luncheonette.

14 Q How did you know where to meet him?

15 A He told me that's where we had to meet.

16 Q Would you go to the luncheonette first?

17 A No, he would tell me at 3 o'clock in the
18 afternoon on a Friday to be there.

19 Q When would he tell you where to be, the week
20 before?

21 A Being I already took the \$1,000 before I
22 borrowed this I knew where to meet him. Either there or the
23 bicycle shop.

24 Q How could you know which place?

25 A How would I know which place?

13

1

2

Q Yes.

3

A By scenery or --

4

Q How would you know where Mr. Riccardi would be?

5

A If he wasn't at the bicycle shop I would go to

6

the luncheonette.

7

Q Which one would you go to first?

8

A According to where I was. If I was coming

9

from Ocean Parkway I go to the luncheonette. Coming from

10

McDonald Avenue I would -- in other words, 86th Street, go

11

to McDonald Avenue first.

12

Q Where was the bicycle shop?

13

A The bicycle shop was on McDonald Avenue.

14

Q And what?

15

A Between X and I am not sure of the street above

16

X. I don't know if it goes by alphabetical order that way.

17

Q Now, in effect, you are telling us for 3 months

18

you paid \$125 a week, am I right?

19

A Yes.

20

Q Which with a little arithmetic, even giving

21

4 weeks to a month, comes out to \$1,500 for those 3 months?

22

A Yes.

23

Q Where did you get the money to pay that \$1,500?

24

A I got it.

25

Q I didn't ask you that.

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A I don't know, but I got it.

Q Did you borrow money from someone else?

A I borrowed from Peter to pay Paul.

Q Tell us who Peter was in September, October and November, 1972?

A It could have been my mother and Paul could have been my father.

Q Is that the best answer you can give us, Mr. DiPalma?

A That's right. That's the best answer I can think of now. I can't think of anything --

Q You can't think of a better one?

A Not a better one as if it was a lie. I can't think where I got the money at the time.

Q In November, did you stop paying that \$125?

A Did I start?

Q Stop.

A I might have. I know I rehashed another loan.

Q How much?

A \$1,000.

Q Where did you do that?

A At the bicycle shop.

Q We are talking now about November or December?

Yes.

1
2 Q What did your payments come to then?

3 A 175.

4 Q Did you pay that through November and December?

5 A Did I pay that through November and December?

6 Q Yes.

7 A Yes, I paid that all the way that time.

8 Q All through November and December?

9 A All through November and December.

10 Q Quick arithmetic on those two months comes out
11 to \$1,400; where did you get it from?

12 A Where did I get what from?

13 Q The \$1,400.

14 A I could have borrowed from the bank then.

15 Q Did you?

16 A I might have.

17 Q What did you do with the \$1,000 given to you
18 in November?

19 A Once again I blew it.

20 Q Tell us how you blew it?

21 A Same thing, just different spots.

22 Q The whole \$1,000 on sports?

23 A Well, there was the trotters open. At the
24 time the flats were closed I believe. I spent some time at
25 the trotters, Friday nights, Saturday nights. I bet baskets.

1

2

football --

3

Q Baskets, you mean basketball?

4

A Yes. Hockey.

5

Q Who did you bet with?

6

A Anybody that would take the bet.

7

Q Who?

8

A Anybody.

9

Q Who?

10

A I don't know who.

11

Q You mean you never met the man?

12

A Met the man?

13

Q Yes.

14

A I just bet.

15

Q Who did you bet with?

16

A People.

17

Q Who?

18

A I don't know their names.

19

Q You mean you bet all this money with a man over

20

the years and you never found out what his name is?

21

A Why should I?

22

Q Where did you place the bets?

23

A I didn't place bets, I just call him.

24

Q Where did you call?

25

A I don't remember where I called.

1

2

Q Did you have a number?

3

A I don't remember the number.

4

Q What happened when you had to pay, who did you

5

pay?

6

A Who did I pay?

7

Q Yes.

8

A Whoever was there to pick it up.

9

Q Where?

10

A On the corner.

11

Q What corner?

12

A Oh, most likely it would be by the park.

13

Q What park?

14

A Kropsy Avenue.

15

Q You don't know this man's name?

16

A No. Why should I?

17

Q He would be standing out in the park always?

18

A Why should I know him?

19

Q How did you know he was standing there?

20

A Most of them stayed there. I didn't know these

21

people all by name. I don't know the last name. I don't

22

know their first names any more.

23

Q There is no one bookmaker you placed all the

24

bets with, you can't remember their first or last names?

25

A I never asked. It could have been Larry, Tom,

1
2 Bill, Harry, John. They all had normal American names.

3 John, Larry, Harry.

4 Q Mr. DiPalma, you don't want to give us those
5 names, do you?

6 A I don't know the last names.

7 Q You don't want those people identified?

8 A I don't know --

9 Q Aren't they people in business with you?

10 A No, sir. Absolutely not.

11 Q When you said 13 days in a row with the Cubs,
12 who did you bet with?

13 A I told you, it could have been a guy by the
14 name of Larry or Bill. That is the only guys I could
15 remember. Last names I don't know.

16 Q Did any of them work for the Transit Authority?

17 A No.

18 Q Didn't you tell me there were plenty of book-
19 makers right in the Transit Authority?

20 A Could be.

21 Q Were there?

22 A I don't know. I never looked into other
23 people's things.

24 Q Didn't you tell us a few hours ago you weren't
25 the only one there, there were two or three other major ones?

1
2 A I can't say who they were. I don't know if
3 they did -- it was only hearsay. All hearsay. This guy does
4 that, and I don't know if it's true. I can't say something
5 about somebody if I don't know it's true.

6 MR. NAFTALIS: I object to this area of
7 questioning as completely irrelevant to the case.

8 THE COURT: It might be irrelevant but it might
9 to to the question of credibility.

10 MR. LA ROSSA: Yes, your Honor.

11 Q Why didn't you find out who in the Transit
12 Authority, why stand out by the park?

13 A Pardon me?

14 Q Why didn't you find out who the bookmaker was?

15 A Why should I?

16 Q Is there any reason you don't want to tell us
17 the names of bookmakers in the Transit Authority?

18 A I have absolutely no reason to say anything
19 about anybody in the Transit Authority because I can't say
20 anything I am not sure about. That is the way it's got to be.
21 I cannot say this guy is a bookmaker or that guy. I can only
22 say what I am. I can't say what other people are. I can't
23 say that.

24 Q You didn't want to give up Patty McKuehn's name,
25 did you?

1

2

A Why hurt him?

3

Q Is that the reason you don't want to give the

4

names of bookmakers?

5

A No.

6

Q May 18, 1972, were you interviewed by a Special

7

Agent?

8

A Was I interviewed by a Special Agent in May 18th

9

of when? 1972?

10

Q Yes.

11

A I might have been.

12

Q Did you refuse at that time to give him Patty

13

McKuehn's name?

14

A I don't recall.

15

MR. LA ROSSA: May I have the number on that

16

(indicating)?

17

MR. NAFTALIS: I don't know which one you are --

18

oh.

19

(Pause.)

20

Q You don't have it in front of you, do you?

21

A I don't know.

22

MR. LA ROSSA: May I describe it without giving

23

the number and we can find it later? It has been

24

marked already.

25

MR. NAFTALIS: I have it.

1
2 Q I show you, Mr. DiPalma, what has been marked
3 3500-5 and I ask you to read the first full sentence of this
4 paragraph to yourself (indicating).

5 I'm sorry. It's the first two sentences.

6 (Pause.)

7 Q Have you read that, sir?

8 A Yes.

9 Q Did you refuse at that time to give up Patty
10 McKuehn's name?

11 A No. What happened was when I said I had a
12 friend they didn't say anything to me about that friend at
13 the time.

14 Q Didn't you say "I learned from a coworker of
15 mine whom I do not wish to identify at thus time -- "

16 A I said that.

17 Q Didn't you say that?

18 A Yes. I said that.

19 Q You refused to identify him?

20 A I said I didn't say it, I said what I just
21 told you. I just told you what I said here is true.

22 Q I'm sorry.

23 How many weeks did you pay the \$175?

24 A I think all the way up to the last part of
25 this case.

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Q All the way up to May?

A Yes.

Q Yes?

A Yes.

Q In other words, the time that you started to wear the recorder and the time you went to the Police Department?

A Yes.

Q You paid \$175 a week all through January, February, March, April and May?

A Yes.

Q Is that right?

A Yes.

Q Are you sure?

A I think so. I just said I am not sure, I think so.

Q Did you ever tell anybody you only paid up to November or December?

A Did I ever tell --

Q That you only paid up to November or December.

A I might have. I might have.

Q I show you again what has been marked Exhibit 5 and I ask you to read to yourself the second page. This paragraph (indicating).

9

1

2

A Yes.

3

Q Did you sign a statement under oath that you made payments up to November and December?

4

5

A I guess I did.

6

Q Was it true?

7

A Did I make payments of \$175?

8

Q Until November and December.

9

A Once again, counsellor, I have to say the month

10

I am not sure of. I am not sure of the month any more. You

11

have to believe me on this. If you ask me again I'm going to

12

tell you I don't know months any more.

13

Q Tell me when you're finished.

14

A I don't know months any more.

15

Q You certainly know when you put that wire on

16

you and went out and met Leo Riccardi, yes or no?

17

A You can't forget that.

18

Q I just asked you whether you made those pay-

19

ments up to that point and you said yes?

20

A I can't tell you something I am not sure about,

21

but I know what I am sure of.

22

Q What was true, did you make the payments up to

23

November or December as you swore to to the FBI on the

24

statement?

25

A Could have been up to November or December, but

1
2 had to be after November and December. Right? Because
3 it was all the way up to June, wasn't it? It had to be.

4 Q Did you tell the FBI in November or December
5 you had a meeting with Mr. Riccardi and two other individuals?

6 A Yes.

7 Q Tell us how you described those two individuals
8 to the FBI?

9 MR. NAFTALIS: May we have a sidebar for a
10 moment?

11 (The following took place at sidebar.)

12 MR. NAFTALIS: Before he continues, there are
13 some words in here I am wondering whether they serve
14 to do nothing other than alienate people in the
15 courtroom. I am not sure that adds anything to it.

16 MR. LA ROSSA: Do you get upset by it?

17 MR. NEWMAN: I am never upset by it.

18 MR. LA ROSSA: I am not doing it for the purpose
19 of --

20 MR. NAFTALIS: I don't think --

21 MR. LA ROSSA: I am not trying to make an attack.

22 THE COURT: I think he is entitled to it --

23 MR. LA ROSSA: There is no Semitic attack by it.

24 (The following took place in open Court.)

25 Q Do you remember that meeting in some detail?

11

1

2

A (No response.)

3

Q Do you?

4

A I think so.

5

Q You fully described it to the FBI, didn't you?

6

A That was then.

7

Q You mean you forgot about it now?

8

A How long ago was that?

9

Q When was it?

10

A I don't know. I don't know when it was, where

11

it was.

12

Q You don't remember where it was?

13

A I can remember, yes.

14

Q Where was it?

15

A Because I read it off there, I would be telling

16

you a lie.

17

Q If you hadn't read that, you wouldn't remember?

18

A I might have remembered some of that incident

19

but not fully.

20

Q Now that you looked, does it refresh your

21

recollection as to where the meeting was?

22

A Yes.

23

Q Where?

24

A I call it the motorcycle shop.

25

Q Did you tell the FBI there were more people

1 there besides Mr. Riccardi?

2
3 A Yes.

4 Q You didn't tell us about that meeting in Court
5 here, did you?

6 A Nobody asked me.

7 Q Did you tell the FBI that meeting was in November
8 or December of 1971?

9 A I don't remember what month it was.

10 Q Did you tell the FBI at that time -- by the way,
11 did you remember the events that occurred at that meeting
12 better on May 18, 1972, than you do today?

13 A Can I remember what happened at the meeting? I
14 don't understand.

15 Q Did you remember what occurred at that meeting
16 in November of 1971 better in May of '72 than you do today?

17 A Better?

18 Q Yes.

19 A I don't think so.
20
21

22 (Continued next page.)
23
24
25

1 Q Do you recall better now than you did then?

2 A I don't know what you mean. Did I know this
3 story better, is that you said?
4

5 Q Let me try again. Maybe it is the way I am
6 phrasing it.

7 A That's o.k., it's my fault. Go right ahead.

8 Q Do you remember what occurred at that meeting
9 at the bicycle shop better when you told the agent about it
10 in 1972, than you do today?

11 Is it more clearer to you?

12 A Is it clearer to me?

13 Q Now than it was in 1972 or was it clearer in
14 1972 than now?

15 A It has to be clearer in '72, I guess.

16 Q Did you tell them the meeting was in November
17 or December?

18 A I don't remember.

19 Q Does that refresh your recollection, after
20 reading that, that you told them that?

21 A I think so.

22 Q Did you tell them that you stopped paying \$175
23 in November or December?

24 A I didn't stop paying \$175 in November or
25 December. I don't know the month, but I never stopped paying

1
2 175.

3 Q Read this paragraph to yourself again, please.

4 (Indicating.)

5 A Right here?

6 Q Yes, read it slowly to yourself.

7 A Yes, I remember this.

8 Q Did you tell the FBI that you stopped making
9 payments of \$175 in November and December?

10 A I guess if I did, I did.

11 Q Did you tell them that?

12 A If I did, I did.

13 Q Is it true?

14 A Yes.

15 Q Did you tell them thereafter you started to make
16 payments of \$100 a week?

17 A 125 from what I remember.

18 See, you have to pay --

19 Q Read on, please.

20 A I continued to make \$100 -- then it was \$100.

21 Q Did you pay \$100 in January? Did you pay \$125
22 in January? What did you pay?

23 A Wait, see, here it says --

24 Q Don't say what it says there. See if this
25 refreshes your recollection?

1
2 A This refreshes my recollection of this
3 particular paragraph.

4 Q What did you pay in January, 100 or 175 or
5 some other figure?

6 A I paid 125 because you see this --

7 Q That's all right. You paid \$125?

8 A Yes, I did.

9 Q So now you know you didn't pay the 175?

10 A No, it was 125.

11 Q What did you pay in February?

12 A The same.

13 Q 125?

14 A Yes.

15 Q What did you pay in March?

16 A I don't know. I think March is when -- one of
17 those cold months I started to have trouble and went down to
18 -- 125 to I think 100.

19 Q What did you pay in April?

20 A Either 100 or 125.

21 Q Back up to 125?

22 A Either 100 or 125.

23 Q Did you ever pay \$50?

24 A \$50 a week? I might have paid \$50 a week too.

25 As a matter of fact, I think I did, but I don't know

when. I think I did pay \$50 a week. I did after I paid the 125 -- I think I did pay \$50 a week after that.

Q When, Mr. DiPalma?

A When, again I don't know. I don't remember.

Q O.K.

Mr. DiPalma, do you remember being asked this question yesterday and giving this answer, page 68:

"Question: Mr. DiPalma, I ask you to think for a few minutes, and tell the Court and the jury approximately how much you paid to Mr. Zero Riccardi in vig payments over the period that you testified about?

"Answer: \$7,000.

"Question: In cash?

"Answer: Yes, sir."

Did you give those answers to those questions yesterday?

A Yes.

Q Who gave you that number?

A My wife.

Q Your wife gave it to you?

A Yes.

Q Did you tell her what you were paying every week like you told us?

A Yes.

Q Did you tell her 175, 125, 100, 50?

1
2 A No, my wife figured it out up to a certain time
3 and it came out to 7 or 8,000 and maybe even more. See, my
4 wife is good at figures. I'm not.

5 Q Where did she get the numbers, from you?

6 A Ma, I guess so, yes.

7 Q So her numbers are as good as what you told her,
8 right?

9 A I guess that's right.

10 Q Who's Hank Deversa?

11 MR. NAFTALIS: I object, your Honor.

12 THE COURT: What is the purpose of this?

13 MR. LA ROSSA: Judge, if this is not relevant --
14 I will show it to your Honor. I ask you to read this
15 paragraph.

16 MR. NAFTALIS: May I see what you are referring
17 to?

18 MR. LA ROSSA: I am referring to this (indicating).
19 (Showing to counsel.)

20 MR. LA ROSSA: Do you still want the Judge to
21 see it?

22 MR. NAFTALIS: Yes.

23 (Document shown to Court.)

24 THE COURT: I will allow it.

25 A I know him.

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Q Who is he?

A Car cleaner.

Q Car cleaner?

A Yes.

Q For the Transit Authority?

A 10 to 6, Coney Island, I believe.

Q How long do you know Mr. Deversa?

A About a year and a half.

Q How do you know him for the year and a half?

A As a gambler.

Q He used to gamble with you?

A No, he just used to gamble.

Q Were you his bookmaker?

A No.

Q Absolutely not?

A Absolutely not. I didn't bother with him. He didn't give me any bets if that's what you mean.

Q That is what I am asking.

A Not to my recollection, he didn't give me any bets.

Q Were you friendly with him?

A Yes, we were friendly.

Q Did you take him to Mr. Ricciardi?

A No, not that I remember.

7

1

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3

Q If someone said that you took him to Zero Riccardi to borrow money, would that be a lie?

4

A That I took Hank --

5

Q Hank Deversa to Zero Riccardi to borrow money.

6

MR. NAFTALIS: I object.

7

THE COURT: It is a hypothetical question.

8

Withdraw the hypothetical and ask your question.

9

10

11

Q Did you ever tell anybody that you brought Hank Deversa, a man who works at the Transit Authority, with you to Zero Riccardi to borrow money?

12

13

A I didn't have to bring him anywhere. He got money on his own.

14

15

Q I didn't ask you that.

I asked you a specific question --

16

17

A Did I ever take him to Zero?

18

19

Q Yes.

A I don't remember telling anyone anything like that.

20

21

Q Let's try again.

Did you ever tell an FBI agent --

22

23

A Yes.

24

Q -- that you took this man to Zero Riccardi to borrow money?

25

A I never told any FBI agent that.

1
2 MR. LA ROSSA: May I just use your copy?

3 MR. NAFTALIS: Yes, and may I use yours?

4 MR. NEWMAN: May I have any copy to look at?

5 MR. NAFTALIS: You have this as 3500 material.

6 MR. NEWMAN: I think I am being short-changed.

7 Q Were you interviewed on the 22nd day of May,
8 1972, by Special Agent Ruffels?

9 A I might have been.

10 Q Take a look at this:

11 You have seen this before, have you not?

12 A I may have. I don't know.

13 Q Read this full paragraph to yourself, please.

14 A I don't remember this.

15 Q Did you tell Agent Ruffels that 2 weeks before
16 that interview, in May of 1972, that you took Hank Deversa
17 on a Saturday to see Zero Riccardi to borrow money?

18 A I don't remember. I honestly don't remember.

19 Q I am asking you if you told him that?

20 A I don't remember if I did.

21 Q After reading that, does it refresh your
22 recollection that you told him?

23 A No, it doesn't refresh my what-you-call-it.
24 It doesn't. Honest to God, I don't remember this.

25 Q Did you mention the name Hank Deversa to these

1

2

agents, sir?

3

A I can't remember even this other name -- I

4

don't know if I ever mentioned this. I don't know. I don't

5

know if I ever mentioned that name. I am not sure. I don't

6

know.

7

Q You don't remember whether you told the FBI

8

agent that or not?

9

A I don't remember if I told the FBI agent or not.

10

Q Now, I am asking you something completely

11

different.

12

A Yes.

13

Q Did you take him to Zero Riccardi on a Saturday?

14

A I took no Hank Deversa to see nobody on a

15

Saturday.

16

Q Who is Tony Bassila?

17

A A very nice guy.

18

Q Who is he?

19

A A friend of mine.

20

Q Good friend?

21

A Yes.

22

Q Still a friend?

23

A I think so.

24

Q Did you take him with you to see Zero?

25

A I don't recall taking him to see Zero.

1
2 Q Did you tell Agent Ruffels on the 22nd day of
3 May, 1972, that you did?

4 A Once again I just told you I don't remember
5 saying that.

6 Q Did you tell the agent that Mr. Bassila
7 accompanied you to the luncheonette when you paid Zero?

8 A I don't remember.

9 Q Let me show it to you again.

10 (Document shown to witness.)

11 I ask you to read this one sentence. (Indicating.)

12 Do you have the same one or a different one?

13 A I don't know.

14 Q Right here where it starts with the word "on",
15 read that to yourself.

16 (Document handed to witness.)

17 A I don't remember -- I don't remember taking
18 anybody there. I don't remember.

19 Q I am not asking you that. I am asking you does
20 it now refresh your recollection, sir, that you told Agent
21 Ruffels on one occasion that Tony Bassila accompanied you to
22 the luncheonette to pay Zero?

23 A I don't remember.

24 Q You don't remember whether you told him that?

25 A I don't remember.

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not?

Q Do you remember whether he accompanied you or

A Tony?

Q Mr. Bassila.

A Tony never went with me to that luncheonette.

Q Did you ask Mr. Bassila -- withdrawn.

When was the last time you saw Tony Bassila?

A About 2, 3 years ago.

Q Have you seen him since this interview in
1972?

A No, the last time I seen him was when we took
a test together.

Q When was that?

A We took a helper's B test. I don't remember
the date. It might have been in '72. That's the last time
I seen Deversa and the other people you got in there.

Q Is this before you met Zero Riccardi?

A Is this before?

No, this was -- this was after -- after that tape and
all. That's when I took the test. That's when I seen these
guys.

Q Deversa?

A I think so.

Q Bassila?

1

2

A Bassila, yes.

3

Q Did you talk to him?

4

A Tony?

5

Q Did you talk to him that day?

6

A Yes, I spoke to him.

7

Q Did you ask him if he would back up your story

8

that he came with you?

9

A Did I ask him if he would back up my story?

10

Q Yes.

11

A I don't recall any such thing about Tony going

12

with me to the luncheonette.

13

Q Did you ask him on that day when you took the

14

test would he back up your story that he came with you?

15

A No, I didn't ask him anything like that at all.

16

Tony walked over to me and put his arm around me and said,

17

"I'm sorry to hear about the mess that you are in".

18

That's what he did to me.

19

Q Did you ask Deversa?

20

A Deversa and me, I am not friendly with that guy.

21

I couldn't take him to my house, o.k.?

22

Q Did you have a conversation with Deversa on the

23

day that you took that test?

24

A Yes, I did.

25

Q Did you ask Deversa to back you up and say that

1
2 he went with you to the luncheonette to meet Zero Riccardi?

3 A No, the only thing we discussed was a few
4 dollars or so that I owed him, that I didn't pay him back.

5 Q How much do you owe him?

6 A 250, \$300 to be exact.

7 THE COURT: Would you move back, please?

8 MR. LA ROSSA: Imagine how good I would be if
9 it had wheels. It is habit. I have been doing this
10 all my life.

11 Q Mr. DiPalma, how many times did you see Mr.
12 Riccardi in March of 1972?

13 A Numerous amounts of times.

14 Q Every week?

15 A Every time I had to make a payment.

16 Q How many times did you see him in April of 1972?

17 A Same amount of times I guess.

18 Q How many times did you see him in May of 1972?

19 A Maybe a couple of times.

20 Q Now, you have testified basically, am I correct,
21 that you saw him almost once a week from the day you met him
22 in May of 1972 until such time -- I'm sorry, in May of 1971,
23 until May of 1972, right?

24 A Yes.

25 Q That's 52 weeks, right?

1
2 A I don't know.

3 Q There are 52 weeks in a year?

4 A I told you I'm bad at figures.

5 Q Let me ask you this:

6 Other than the time you put the bug on, Mr. DiPalma,
7 did you ever meet Zero Riccardi with anyone else?

8 A What do you mean?

9 Q Did you ever meet him with someone else?

10 A Did I ever meet him with someone else?

11 Q Yes.

12 A In other words, someone accompanying me to see
13 him?

14 Q Yes.

15 A I don't remember. I might have.

16 Q Did you ever meet him where there was someone
17 else there that you knew, so we can call on him to verify
18 your meeting?

19 A I don't know.

20 Q Never?

21 A I don't remember.

22 I don't remember honestly. Maybe, but I don't remember.
23 It could have been, but I don't remember.

24
25 (Continued next page.)

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Q Do you remember testifying yesterday about
June 2nd, putting the bug on, going to a place in Brooklyn?

A Yes.

Q Meeting the man on the right there?

A Yes.

Q Do you remember his name now?

A Gigliotti.

Q What?

A Gigliotti. Do I remember his name yesterday?

Q Do you remember it now?

A Yes. Gigliotti.

Q Gigliotti.

A Yes.

Q Who told you his name?

A What?

Q Who told you his name?

A I heard it yesterday. I wasn't sure of his
name. I forgot his name.

Q Do you remember telling Mr. Naftalis that you
met him on the street?

A Yes.

Q And you had a conversation with him?

A Yes.

Q He wanted you to wait there for Ciro, didn't he?

1
2 A Yes. No. He told me that he wasn't going
3 to be here I think.

4 Q Didn't you tell us yesterday that he said to
5 you, "Wait here." And you said, "I don't want to wait here."
6 Didn't you tell us that?

7 A I --

8 Q Yesterday I am talking about.

9 A I don't remember if I said that yesterday.

10 Q Well, read it.

11 A Can I see it?

12 Q Sure.

13 A Where is it?

14 Q Right at the bottom. Read the bottom and then
15 go over to the next page?

16 A Yes.

17 Q The next one where it's marked.

18 A Right here.

19 Q "When I --"

20 A All right.

21 Q All right. Now, stop for a moment. Did he say
22 to you, "Wait here".

23 A Must have said that.

24 Q Wasn't that what you told us yesterday?

25 A If he said, "Wait here," he must have said,

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"Wait here".

Q And what did you say?

A It says what it says.

Q Tell us what it says?

A "I don't want to wait here."

Q Isn't that what you swore to under oath
yesterday?

A If that's what I said, I guess I said it.

Q Is it true?

A I guess it is.

Q So, in other words, you pulled up in a car,
got out of the car, walked over to the gentleman and said --
after a few words, he said to you, "Wait here."

And you said, "I don't want to wait here."

Is that right?

A Well, if that's what I said, that's what I said.

Q Is it true?

A I'm not sure if it's true.

Q Is there any way we can tell whether it's true
or not?

A Well, you heard the tapes, didn't you? What
did the tapes say?

Q What do you say right now?

A I don't know what I said word for word at that

1
2 time. I couldn't tell you word for word what to say three
3 years ago. Impossible.

4 Q As a matter of fact, if you look at the tapes --
5 and you have, haven't you?

6 A I have.

7 Q You will find that you said, "I don't want to
8 go anywhere. I am going to wait here. Why don't you bring
9 him here?"

10 Isn't that what happened?

11 A I said that.

12 Q And I am paraphrasing.

13 A If I said that, I said that.

14 Q Yesterday, you swore under oath here that that
15 man said to you, "Wait here." And you said, "I don't want
16 to wait here."

17 A I don't know if I said it like that. If I said
18 it like that, I said it.

19 Q Well, Mr. DiPalma, do you doubt the veracity of
20 the man who took the statements here yesterday in court?

21 A I don't doubt that man's veracity, no way.

22 Q Do you doubt his accuracy? We can have it read
23 back?

24 A I don't doubt his accuracy. I'm doubting my
25 word for word that I said three years ago. I am not doubting

1
2 anybody's word in this court.

3 Q Mr. DiPalma --

4 MR. NAFTALIS: Let him finish.

5 I am sorry. I was going to ask that Mr. DiPalma
6 be permitted to finish.

7 Q Were you finished?

8 THE COURT: Do you want to add something?

9 THE WITNESS: Yes. I would like to say I am
10 not doubting anybody in this courtroom. I am only
11 saying to you that I cannot give you a word to word
12 description of everything that I said in the last
13 two or three years. Because if I could give that,
14 I would be a professor in English.

15 Q But, Mr. DiPalma, we are not talking about --

16 A What are we talking about?

17 Q We were talking about yesterday. Yesterday
18 afternoon, Mr. DiPalma?

19 A Yesterday afternoon I was nervous, sir. Just
20 like you would be if you walked into the courtroom for the
21 first time.

22 Q In other words, when you're nervous, you can't
23 -- really can't tell whether or not you are correct or not;
24 is that right?

25 A The first day, yesterday.

JB:GA
T5R1aPM

1

Q Is that right?

3

A The first day I came in this courtroom, and I

4

-- and I was nervous.

5

Q Were you nervous throughout that day?

6

A I think so.

7

Q So you -- you're really not sure whether you are

8

accurate or not; is that right?

9

A I am sure of what I said. What I said on it.

10

Whatever I said on the tapes, and what was ever brought back

11

was not done by a ventriloquist who manipulates my mouth. I

12

can say to you, I am sure of what -- I can say now that I was

13

-- Yes, sir, nervous yesterday. Yes, sir, I was.

14

Q So whatever you said yesterday --

15

A I did not say that --

16

MR. NAFTALIS: May Mr. DiPalma be permitted to --

17

THE COURT: This is somewhat argumentative.

18

THE WITNESS: I cannot say -- I keep telling you

19

over and over -- Honest to God, I wish I could give you

20

every precise answer in here and we can all go home.

21

MR. LA ROSSA: I am going into another subject,

22

your Honor. Do you want me to continue?

23

THE COURT: Yes. For another five minutes or so.

24

MR. LA ROSSA: I am going to pick another subject

25

that won't take more than five minutes.

DiPalma - cross/LaRossa

2 1 THE COURT: All right. Pick another subject.

2
3 MR. LA ROSSA: That's what I am trying to do.
4 You never know how long it's going to take, though.

5 THE COURT: Not because of my choice. Because
6 you have another problem.

7 MR. LA ROSSA: Yes, I know.

8 Q Mr. DiPalma, do you remember telling us that
9 there came a night when people knocked on the door?

10 A Yes.

11 Q Banging on the door?

12 A Yes, sir.

13 Q There were two Policemen with you?

14 A Yes.

15 Q You went into the baby's bedroom, you said, or
16 the children's bedroom?

17 A Children's bedroom, yes.

18 Q Is that -- And you looked out of the window?

19 A If I must -- I got to say like this. It was a
20 bedroom that was split. It was mine and my children's bedroom
21 at the time.

22 Q There was a window that you looked down?

23 A Three windows. One on the left, middle and right.

24 Q And you looked out and you saw three men?

25 A Pardon me?

2 Q You looked out and you saw three men?

3 A As they were going down the stairs, yes.

4 Q Did you recognize the other two men?

5 A No. I never -- I don't recognize them.

6 Q Did you look at them?

7 A Yes. But I don't recognize them.

8 Q By the way, when they were walking down the
9 stairs, were you looking at the back of them walking down the
10 stairs?

11 A No.

12 Q The side?

13 A Just -- Well, they have to walk downstairs from
14 the back. And then they turned around and looked at each other
15 and went away.

16 Q That's when you saw them?

17 A That's when I seen their face as clear as day.

18 Q When did you see their faces? When they were
19 walking down the stairs, or when they were in front, and stopped
20 to talk to each other?

21 A Well, you asked me this question a different way,
22 because I can only say it like this, if it's all right with you.

23 Q Well, try it.

24 A Okay. The voice, I heard.

25 Q You recognized the voice?

4

1

2

A Yes, sir.

3

Q You didn't tell us that, did you?

4

A The voice I heard banging on my door.

5

"Open up the door, you dirty --" such-and-such.

6

Q So you knew it was them without looking out the

7

window?

8

A Yes, I knew it was them.

9

Q Did you tell the Police that you recognized the

10

voice?

11

A I told the Police.

12

Q Did you tell the FBI?

13

A Did I tell the FBI?

14

Q That you recognized the voice?

15

A Did I tell the FBI? I think I did tell the FBI.

16

As a matter of fact, I think I did.

17

Q Tell me, you have had a chance to read all the

18

statements you have given to everyone, haven't you?

19

A Pardon me?

20

Q You have had a chance to read all the statements

21

you have given to everybody, haven't you?

22

A I don't know. I have --

23

Q Have you ever seen one word in any of those

24

statements, Mr. DiPalma, about the banging on the door, and

25

the voice that you recognized?

2 A I don't know if there is one.

3 Q There isn't, is there?

4 A I doubt it. I guess not. I guess --

5 Q So it didn't make any difference whether you
6 recognized the goatee or not, as you put it yesterday? You
7 recognized the voice.

8 A I did say to you, sir, that I was nervous yester-
9 day. And I did say to you about the goatee matter. I knew
10 about the knocking on the door. I knew this. I knew this from
11 previous times, sir.

12 Q In other words, if you hadn't heard any voices,
13 you would have known that knock on the door, right?

14 A Yes. It was the first time it was ever knocked.
15 The first time it was ever kicked in.

16 Q Did they kick the door in?

17 A The door was kicked. The outside. The inside
18 door was not kicked in because there is a lock there.

19 Q Do you mean they broke and entered the premises
20 that night?

21 A No. The first door, you can open. The second
22 door, they kicked the bottom like that.

23 Q And they broke it in?

24 A No. I said, kicked the bottom of the door.

25 "Open up."

DiPalma - cross/LaRossa

My wife and two children went in the bedroom.
And I stood by the window with the Officer.

MR. LA ROSSA: Is this close enough?

THE COURT: Yes.

Ladies and Gentlemen, I did promise that I would
keep you until 5:00 o'clock. But Mr. LaRossa has a
command performance in front of the Chief Judge of this
Court this afternoon at 4:30.

MR. LA ROSSA: As a lawyer.

THE COURT: As a lawyer. Which the Chief Judge
called me about it at noon and asked if he could have
him, and I said he could have him. So you are going to
be deprived of a half hour of Mr. LaRossa.

Don't discuss the case. I will see you tomorrow
morning at 10:00 o'clock.

(Whereupon, the jury retired from the courtroom.)

(Witness excused.)

THE COURT: All right.

(Whereupon, an adjournment was taken to Thursday,
May 22, 1975, at 10:00 o'clock A.M.)

* * *

I N D E XWitnessesDirectCrossReDirect

Arthur Ruffels

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128

Frank DiPalma

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ExhibitsGovernment'sFor Id.In Evid.

5-A, 5-B

2 Photos

80

87

6

Document

30

2-B, C, D

Photos

82

84

BS/nc
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1 F R A N K D I P A L M A , called as a
2 witness herein, having been previously duly sworn
3 by the Clerk of the Court, resumed the stand and
4 testified further as follows:

5 THE COURT: Seat the jury, please.

6 (Jury present.)

7 THE COURT: Good morning, ladies and gentlemen.

8 I hope you had a good weekend. I think we
9 have everybody here except for Mr. Newman, who was
10 here a moment ago and I don't know where he is now.

11 MR. LA ROSSA: He's on his way in, your Honor.

12 THE COURT: Will you get your witness, please.

13 MR. NAFTALIS: Yes, your Honor.

14 (Mr. DiPalma resumes the stand.)

15 THE CLERK; Three exhibits marked for identi-
16 fication as Government's Exhibit 3500-11, 3500-12
17 and 3500-13.

18 (So marked.)

19 RECROSS-EXAMINATION

20 BY MR. LA ROSSA: (Cont.)

21 Q Mr. DiPalma, on Thursday, you told us that
22 after reflecting over the lunch hour there were things that
23 you recall that you hadn't recalled before.

24 Have you thought about your testimony,
25 Mr. DiPalma, on Friday, Saturday, Sunday and Monday of this

1
2 weekend?

3 A Yes.

4 Q Are there answers that you would like to change
5 today that you gave to us last week ?

6 A The one I -- an Uncle Speedy. That there goes
7 back to my childhood days. I had a friend of mine who used
8 to live with me, and -- on one side of Brooklyn when I was
9 about ten years old. He had an Uncle Speedy that lived
10 in Harlem. That's where I got that name from.

11
12 Q Anything else?

13 A Not that I can think of.

14 Q Are there any things that you ~~now~~ recall that
15 you could not recall last week?

16 A I think whatever I said I said. What -- can
17 I ask you what you ~~mean~~ about what I recall?

18 Q Is there anything that you recall now that
19 you couldn't recall last week?

20 A No. What I told you.

21 Q Now, you just told us a moment ago that
22 this Uncle Speedy name came up from a childhood experience
23 of yours?
24

25 A Yes.

- 1
2 Q Is that the last time you used it?
3 A Was it the last time I used it?
4 Q As a child?
5 A No.
6 Q You used that name as an adult, didn't you?
7 A Yes.
8 Q You used that name in 1972, didn't you?
9 A Yes. I guess so, yes.
10 Q Any question in your mind about that?
11 A No.
12 Q Did you use it in 1971?
13 A Probably could have.
14 Q And all these other fictitious names that
15 you made up that you told us about, without going through
16 them all, you used those in 1971 and 1972, didn't you?
17 A I don't know if I used them. Maybe sometimes
18 I could have.
19 Q Did you ever call up anyone on the phone and
20 tell them that's who you were?
21 A No.
22 Q Any one of these fictitious people?
23 A No.
24 Q Did you ever call Ciro Riccardi and tell him
25 that?

1
2 A No.

3 Q Did you ever have anyone call **Ciro Riccardi**
4 and say they were **Uncle Speedy** from **Harlem**?

5 A No.

6 Q You are sure of that?

7 A That's right.

8 Q On redirect on Thursday you were asked about
9 an incident in the bicycle shop.

10 Do you recall that?

11 A Yes.

12 Q And you said that there were two men there
13 with **Mr. Riccardi**; is that correct?

14 A Yes.

15 Q How do you describe those two men?

16 A One guy was tall, blondish hair, and the
17 other one was heavysset and looked Jewish to me.

18 Q What does that mean to you, "looked Jewish"?

19 A Pardon me?

20 Q What does "looked Jewish" mean to you?

21 A I don't know. I heard people tell me I looked
22 Irish, so I don't know what it means. Same thing anybody
23 else walks up to me and says, "Your look Irish," so that's
24 what it means to me.

25 Q You said that **Mr. Gigliotti** looked Jewish,
didn't you, on one occasion?

1

2

A Yes.

3

Q He wasn't the man in the bicycle shop, was he?

4

A No.

5

Q Who were these two men?

6

A I don't know.

7

Q Were they Mr. Riccardi's partners?

8

A They could have been.

9

Q Were they?

10

A I don't know.

11

Q Did you ever tell the FBI that they were

12

his partners?

13

A I don't know if I did or not. They could have

14

been. They acted like they were.

15

Q When did you borrow money from Bankers Trust

16

for the first time?

17

A (No response.)

18

Q Withdraw the question.

19

Did you borrow money from Bankers Trust

20

before you met Ciro Riccardi?

21

A Did I borrow money before?

22

Q Did you borrow money from Bankers Trust before

23

you met Ciro Riccardi?

24

Can you answer that yes or no?

25

A I could have.

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Q Did you?

A I could have. I could have.

Q Is that the best answer you can give us right now?

A Yes, sir.

Q Do you remember being asked these questions and giving these answers to Mr. Naftalis --

MR. NAFTALIS: What page and date?

Q -- late Thursday on Page 422, on redirect?
He was asking you questions about the bank at this time.

A Is that the -- is that the Grand Jury testimony?

Q This is what you said last Thursday afternoon, here.

A Oh.

Q "Question: And you owed some of these people money when you went to Mr. Riccardi, is that also true?

"Answer: Yes, sir."

Did you give that answer to that question last Thursday here in this courtroom?

A Yes.

Q "Question: Were you behind in the payments to these people?

"Answer: Bankers Trust I believe was behind."

Did you give that answer to that question?

1 A Yes.

2 Q Did you borrow the money from Bankers Trust
3 before you met Mr. Riccardi?

4 A I might have.

5 Q Well, when you gave that answer that you were
6 behind two payments to Bankers Trust --

7 MR. NAFATLIS: Your Honor, there is nothing
8 in the testimony that says behind two payments.

9 Q When you were behind payments to Bankers
10 Trust --

11 THE COURT: Your form is bad. Try again.

12 BY MR. LA ROSSA:

13 Q When you said you were behind in payments to
14 Bankers Trust at the time you met Ciro Riccardi, was that
15 true or not?

16 MR. NAFATLIS: Your Honor, I object.

17 That's not what the witness testified to.

18 If Mr. LaRossa wishes to read his answer --

19 MR. LA ROSSA: I read his answer.

20 MR. NAFATLIS: It says, "I believe I was
21 behind." It doesn't say, "I was."

22 MR. LA ROSSA: I don't believe this is proper.

23 THE COURT: I think it's perfectly proper
24 cross-examination. He can explain if it's in variance
25 with what he said. It's the jury's recollection and

not your recollection that controls anyway,
Mr. LaRossa.

BY MR.LAROSSA:

Q Did you say, Mr. DiPalma, that you were --
that you believed that you were behind payments to Bankers
Trust at the time you met Mr. Riccardi?

A Yes.

Q Was that true?

A Possible.

Q You mean everytime you gave us an answer
on Thursday, it was possible that it was true?

A No, sir.

Q Well, tell us now, is that answer that you
gave us Thursday afternoon true or not?

A I could say it is -- if I may, when you talk
about the borrowing of money between Bankers Trust, National
City and all those, I must go back to this, at the same time
that I was going through the money problems I had also been
testifying in the Grand Jury, I believe, at the time.

Now, it's hard for me to say if I had the money
after or had the money before. Like I said, I'm sure -- now,
this is another thing I'm not too sure of --

Q It's another thing you are not too sure of, is
that what you said?

1
2 A Two payments I told you that I made. One
3 could have been before, but the second time I think was after
4 I met Mr. Riccardi. Because Bankers Trust came to my
5 house a few times after I was under this indictment in the
6 Grand Jury, when I went to the Grand Jury.

7 Q How many times did they come to your house?

8 A Bankers Trust?

9 Q YES.

10 A Oh, about two or three times.

11 Q Did you refer them to Mr. Ruffels?

12 A No, sir, I didn't.

13 Q Did you refer them to Mr. Nafatlis or Mr.
14 Murphy or anybody else in the Department of Justice?

15 A No, sir, I didn't.

16 I just told them that I was beat up and he told
17 me to watch -- this guy who came told me to watch myself,
18 from Bankers Trust.

19 Q Didn't ask you for the money, did they?

20 A Of course. Wouldn't you?

21 Q Did they ask you for the money?

22 A Yes, he asked me for the money, to do the best
23 you can to pay it.

24 Q Do you remember being asked about Mr. Gentile
25 on redirect?

1

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A Yes.

3

Q Do you remember being asked --

4

MR. NAFTALIS: Page, please?

5

MR. LAROSSA: When I get it I'll give it to you;
page 425, again on Thursday, on redirect.

6

7

Q Were you asked this:

8

"Question: Do you remember Mr. LaRossa
questioned you about a man called John Lane or John
Lane Gentile?

10

11

"Answer: Yes."

12

Did you give that answer to that question?

13

A Yes.

14

Q "You remember the question about that," was

15

the next question.

16

"Answer: Yes."

17

"Question: Do you remember if he asked you
if you ever told the FBI that John Lane Gentile was
a loan shark or a shylock?"

19

20

"Do you remember when he asked you that?"

21

A Yes.

22

Q "Answer: Yes."

23

"Do you remember being asked that by Mr. LaRossa?"

24

A Yes.

25

Q Do you remember all those questions?

1

2

A Why?

3

Q Did I ask you whether or not he was a loan

4

shark or not?

5

A I don't know. I guess so. I think you did,

6

yes.

7

Q Tell me this, Mr. DiPalma, you were asked a

8

number of questions about your gambling operation --

9

remember that?

10

A Yes.

11

Q And you were asked about points and spreads,

12

and I'm not going to go through all that again --

13

A Yes.

14

Q -- and at one point in redirect Mr. Naftalis

15

asked you if you ever laid off bets with another bookmaker,

16

do you remember that?

17

A Yes.

18

Q And you said yes; is that right?

19

A Yes.

20

Q Is that true?

21

A Did I lay off bets?

22

Q Yes.

23

A I've laid off my bets, why not?

24

Q I'm talking about bets that you ~~ear-ear~~

25

to you as a bookmaker.

A I don't know, I could have.

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Q You told him that you did, didn't you?

A If I did, yes.

Q Who did you lay off the bets with?

A I don't know.

Q You can't tell us the name?

A No. Because -- I'll tell you why I can't tell you the name, I myself, when I met people, I met them down by the park and I didn't know these people personally. I just went over to them, gave what I had to give and walked away,

I couldn't handle any big bets if I ever got any, which may be sometimes I did, but I made my own personal bets to these people.

Q One last question: Did anybody ever hit a number from you?

A No, sir.

MR. LA ROSSA: Thank you.

I have nothing further.

RECROSS-EXAMINATION

BY MR. NEWMAN;

Q Mr. DiPalma, do you recall on Thursday you were being cross-examined and you went out to lunch and you came back and Mr. Naftalis conducted redirect examination of you?

1

2

A Yes.

3

4

5

Q Did I understand you correctly on Thursday, when Mr. Naftalis put you back on the stand for redirect examination he never spoke to you during the luncheon recess?

6

A No, sir.

7

8

Q He didn't say a word to you as to what areas he was going to cover?

9

A No, sir.

10

Q He didn't show you any Grand Jury testimony?

11

A No, sir.

12

13

Q Didn't ask you to look at this Grand Jury testimony to refresh your recollection?

14

A No, sir.

15

16

17

Q Do I understand you that he put you back on the stand and threw questions at you right out of the blue, right?

18

A Yes, sir.

19

20

Q Never prepared you at all, never discussed it with you?

21

A No, sir.

22

23

24

25

Q You understand there is nothing wrong with the lawyer who puts you on the stand as a witness discussing things with you and preparing you for your testimony, you understand that?

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A Yes, sir.

Q Before you came in here to being with the first time you met with Mr. Naftalis, did you not?

A Yes.

Q On how many occasions?

A What do you mean?

Q How many times did you meet with him before you took the witness stand here the first time?

A What do you mean, after I left the --

Q No, before you -- the first time you came in here, before you walked in here, okay?

A Before I walked in here?

Q Right.

Did you meet with Mr. Naftalis?

A The last time I met with Mr. Naftalis, we would go back around maybe -- maybe a few months ago.

Q So in other words, the first time you saw Mr. Naftalis before he called you to the witness stand that day --

A Yes.

Q -- you hadn't seen him for a couple of months?

A No. Listen --

Q You tell me.

A I don't know what you are trying to tell me.

1
2 You are trying to confuse me.

3 Q I'm trying to ask you --

4 A You are not asking me. You are trying to make
5 me look like a fool, and I don't understand this. I'm --

6 Q I wouldn't do that for the world.

7 A I'm trying to say to you as honest as I can
8 to answer this question, but to bait me and trick me and
9 get me to say something I can't answer is the thing.

10 I don't understand what you are talking about.
11 I said to you that I met with Mr. Naftalis two months ago be-
12 fore I walked into this courtroom.

13 Isn't that what I said?

14 Q Right.

15 A Now, I also said, when I left this courtroom --
16 this seat here, walked out that door, Mr. Naftalis didn't
17 show me any Grand Jury papers. He didn't say anything to
18 me at all.

19 Once again, he said the same thing Mr. Ruffels
20 told me, "Just sit there and tell the truth."

21 That's what he told me.

22 Q Finished?

23 A Yes.

24 Q Okay.

25 Before you came into this courtroom and took the

DiPalma -cross/Newman

witness stand, do I understand you correctly, a couple of months prior to that you met with Mr. Naftalis?

A Yes.

Q Okay.

Between that couple of months and the date you walked on the witness stand here for the first time did you meet with Mr. Naftalis?

A Did I meet with Mr. Naftalis?

Q Yes.

A After?

Q Yes.

A What do you mean by after? Would you explain that, please?

Q Sure.

Before you got on the witness stand here, did you just tell me a minute ago that two months or a couple of months before you got on the witness stand --

A Yes.

Q Okay.

A Yes.

Q After that couple of months did you meet with Mr. Naftalis?

A Just till I got into the courtroom here.

Q Before you walked into the courtroom did you

1
2 meet Mr. Naftalis in his office?

3 A Yes.

4 Q And at that point when you met with him in
5 his office did he go over any of the questions with you
6 that he was going to ask you ?

7 A The first day I came here --

8 Q Yes.

9 A -- I don't think he did.

10 Q All right.

11 Before you came here and after you met Mr.
12 Naftalis a couple of months before you came here, did you
13 meet with Mr. Ruffels and go over your testimony?

14 A Did I meet with Mr. Ruffels?

15 Q Yes.

16 A Are you talking about when I came over here
17 two months, three months ago?

18 Q Yes.

19 A Yes.

20 We sat there and talked.

21 Q After that, and before you started to testify
22 in this case, did you meet with Mr. Ruffels?

23 A Do you mean meeting with him like walking out
24 of here?

25 Q I mean sitting down with him and talking

1
2 about your testimony.

3 A When?

4 Q After you met with Mr. Naftalis a couple of
5 months ago?

6 A Yes.

7 Q How many times did you meet with Mr. Ruffels?

8 A Mr. Ruffels -- many times.

9 Q Half dozen? Ten?

10 A I don't know exactly the figure on how many
11 times. I said many times.

12 Q And during these many times did Mr. Ruffels
13 go over your testimony with you.

14 A Sometimes.

15 Q Did he show you your Grand Jury testimony?

16 A Did he show me -- I don't know if he showed
17 it to me, no.

18 Q But one thing is clear, when you left the
19 witness stand here on Thursday and went out to lunch neither
20 Mr. Ruffels nor Mr. Naftalis talked to you before you
21 started your redirect examination?

22 A No, sir, they didn't.

23 Q Do you know what I mean by redirect examination?

24 A No.

25 Q That's when Mr. Naftalis asked you questions

1

2

again Thursday afternoon?

3

A Yes.

4

Q Prior to that time, and during the recess ,

5

he didn't say a word to you?

6

A No.

7

Q He didn't show you Grand Jury testimony,

8

for examination, and say, what did you mean when you gave

9

that answer?

10

A No.

11

Q Do I understand you correctly then when he

12

had you on direct examination and he asked you to look at

13

page 17 of your testimony of June 13th, 1972, that was the

14

first time Mr. Naftalis talked to you about that testimony?

15

A Yes, sir.

16

Q And that's your answer?

17

A That's right.

18

Q He never showed it to you before?

19

A When? He showed it to -- months ago he could

20

have showed it to me.

21

Q Between months ago and Thursday afternoon he

22

never showed it to you?

23

A No, sir, he didn't

24

MR. NAFTALIS: I object to Mr. Newman shouting. It

25

isn't necessary.

1
2 MR. NEWMAN: I apologize. I left the podium.
3 I apologize.

4 THE COURT: Come up here a minute.

5 (Side bar.)

6 THE COURT: Mr. Naftalis made a representation
7 to the Court that on Thursday he was going to the
8 dentist during the noon hour, and I assume he kept
9 that dental appointment.

10 I assume he didn't have time to do what you are
11 suggesting he did do.

12 I don't know what you are trying to do, but
13 you better be careful because if you are trying to
14 create a false impression in this jury's mind I am
15 going to instruct them that he went to the dentist.

16 MR. NEWMAN: I'm interested in one question here
17 on page 17, which Mr. Naftalis -- see here, if you
18 remember MR. Naftalis asked him --

19 THE COURT: It isn't unusual. I noticed the
20 same thing when I read the Grand Jury testimony.
21 When you first went after that, it was like taking
22 something out of context and you did it and I thought
23 it was not a very nice thing to do, taking it out of
24 context in the way you did, but it doesn't necessarily
25 mean that he, when he reread that whole thing, didn't

1
2 see it just the same way as I saw it when I first
3 read it.

4 What you are suggesting is that Mr. Naftalis
5 has made a misrepresentation to this Court, and I
6 think it's quite reprehensible.

7 MR. NEWMAN: Judge, that's not my intention
8 at all. What I am trying to find out is if he was
9 shown this question --

10 THE COURT: You forget, he asked for per-
11 mission to go to the dentist.

12 What are you going into this nonsense for?

13 MR. NEWMAN: I wanted to know if Mr. Naftalis
14 showed him the question and this answer and asked
15 him to explain it.

16 THE COURT: I don't think you need it.

17 MR. NEWMAN: That's what I wanted to know.
18 That's the question and answer I'm interested in.

19 THE COURT: Ask it. But don't make suggestions
20 out of context. You are leading the jury into
21 believing that Mr. Naftalis took him out and coached
22 him when you know and I know and I assume based on
23 his representation, that he wasn't even here to do
24 that.

25 MR. NEWMAN: I'm interested in one question.

1
2 THE COURT: I think that's what is reprehensible.
3 You shouldn't create that impression when
4 the facts are otherwise.

5 Why do you ask those questions if you are --

6 MR. NEWMAN: I'm talking about Grand Jury
7 testimony.

8 THE COURT: Why do you ask those questions
9 when you know the facts are otherwise?

10 MR. NEWMAN: Am I going to argue to the
11 jury that Mr. Naftalis improperly prepared him?
12 There is nothing wrong with preparing a witness.

13 THE COURT: He wasn't here to even talk to him
14 about it.

15 MR. NEWMAN: To go over that one question with him.

16 MR. NAFTALIS: I will make that representation
17 to the Court. After I left this office, I went
18 upstairs to my office and put the files down and left
19 by car.

20 (continued next page.)

21 ylf fles.
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2 MR. NEWMAN: Do you know if Mr. Ruffels asked
3 him about it? Did Ruffels ask him about this question?
4 I will get off it if you don't know.

5 MR. NAFTALIS: No.

6 MR. NEWMAN: That's the question I'm interested
7 in.

8 MR. NAFTALIS: I would like an instruction that
9 I was given permission to go to the dentist.

10 THE COURT: I will do that.

11 (Open Court)

12 THE COURT: The reason why I interrupted Mr.
13 Newman's questioning is, last Thursday before lunch
14 Mr. Naftalis asked the Court for permission to go to
15 the dentist, that's why I adjourned earlier during the
16 Thursday lunch hour, and Mr. Newman knows that Mr.
17 Naftalis went to the dentist during the noon hour and
18 yet he's persisted in asking these questions trying
19 to create an erroneous impression in your mind. Mr.
20 Naftalis has just told me that he did go to the dentist
21 during the noon hour and didn't talk to this witness.

22 MR. NEWMAN: May I proceed, Judge?

23 THE COURT: Yes.
24
25

1 2
2 RECROSS-EXAMINATION

3 BY MR. NEWMAN: (Cont'd.)

4 Q Will you look at Page 17, please, of the Grand
5 Jury testimony of July 13, 1972, 3500-10, this underlying I
6 put in, it wasn't there. Will you look at that?

7 A 16 and 15?

8 Q Beginning here on Line 9 and running through 16.
9 Read it to yourself, the markings are my markings.

10 (Pause)

11 A Yes.

12 Q Do you remember on redirect examination being
13 asked about that question and answer?

14 A Yes.

15 Q During the luncheon recess on Thursday did Mr.
16 Ruffels show you that question and answer in the Grand Jury?17 A No, sir. Mr. Ruffels didn't show me that ques-
18 tion or that answer.

19 Q Did you finish looking at it?

20 A Yes.

21 Q Now, directing your attention to Thursday
22 afternoon. Do you recall saying that what you said before
23 the Grand Jury was the truth?24 A I believe I said what I said was believed to
25 be the truth.

2 Q Right. And do you remember saying what you
3 said then before the Grand Jury was the truth? Do you recall
4 that statement on Thursday afternoon?

5 MR. NAFTALIS: What page are you referring to?

6 MR. NEWMAN: I don't have the minutes available
7 to me. I didn't have a chance to look at them.

8 MR. NAFTALIS: Here is my copy (handing).

9 MR. NEWMAN: Would you look at Page 476, please,
10 Mr. Naftalis.

11 MR. NAFTALIS: It's Mr. LaRossa's recross-
12 examination and not my redirect.

13 MR. NEWMAN: I didn't say your redirect. I
14 said, did he say on Thursday afternoon. Line 11 I'm
15 reading from.

16 Q Question by Mr. LaRossa:

17 "Question: Can I ask you this, while you are
18 eating your apple and having your coffee, are there
19 any other answers that you would like to change for
20 the last two days because upon reflection you realize
21 you made a mistake?"

22 Do you remember that question, sir?

23 A Yes.

24 Q "Answer: I can't, I can only -- I can only say
25 this, once again with all honesty, I made the statement

1 4

2 in 1971 and possibly in '72 when I appeared in front
3 of the Grand Jury. At that time I know I was right
4 in what I said. Word for word, tell me no, which is
5 almost two or three years, which is pretty hard for
6 me to say what I said in '72. But what I will say now
7 is what I said then is the truth, so help me God."

8 Do you remember that answer?

9 A Yes.

10 Q By that, sir, that what you said before the
11 Grand Jury in 1972 was the truth?

12 A By what I said in 1972 --

13 Q By what you said on Thursday afternoon in that
14 answer, did you mean that what you said before the Grand
15 Jury was the truth?

16 A Yes.

17 Q Now, sir, you appeared before the Grand Jury
18 on July 13, 1972, is that right?

19 A Yes.

20 Q Turning to Page 13 of Exhibit 3500-10. You
21 were asked certain questions there by Mr. Murphy, is that
22 right?

23 A Yes.

24 Q And we established on a number of occasions
25 you were under oath?

1 5

2 A Yes.

3 Q And Mr. Murphy was the Assistant United States
4 Attorney at the time?

5 A Yes.

6 MR. NEWMAN: Do you have a copy of the Grand
7 Jury minutes I can show to this gentleman?

8 MR. NAFTALIS: Yes.

9 MR. NEWMAN: May I approach him, please?

10 THE COURT: Yes.

11 Q Will you look at Page 13 and just read it to
12 yourself, starting with -- turn to the bottom of Page 12, Mr.
13 DiPalma?

14 A Page 12?

15 Q Yes. Are you at the bottom of Page 12, the
16 line marked 24, sir?

17 A Yes.

18 Q Were you asked these questions, sir, and did you
19 make these answers:20 "Question: On Monday, May 15th of this year,
21 did there come a time when you saw Ciro parked in a
22 Mercury automobile at the corner of 85th Street along-
23 side a cemetery?"

24 Were you asked that question, sir?

25 A Yes.

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Q "Answer: Yes.

"Question: That's within the past month or so?

"Answer: Yes."

Remember that, sir?

A Yes.

Q Now, this is testimony that you gave on June 13, 1972, sir, so we're clear, the date you are talking about is May 15, 1972, about that incident in the automobile near the cemetery, is that clear in your mind now, sir?

A Yes.

Q "Question: In other words, it was not 1972?

"Answer: No, it was 1972."

I'm sorry.

"Question: In other words, it was not 1971?

"Answer: No, it was 1972."

Were you asked that question and did you make that answer?

A Yes.

Q "Question: Was there anybody else in the car with him?

"Answer: Yes, a friend of his.

"Question: At that time did you walk over to the car?

"Answer: Yes, I did."

1 7
2 Were you asked those questions and did you have
3 that answer?

4 A Yes.

5 Q And that was on June 13th, after June 2nd
6 meeting when you met Mr. Gigliotti in front of the luncheonette?

7 A After?

8 Q Yes. Your testimony before the Grand Jury is
9 on June 13th?

10 A Yes.

11 Q And you met Mr. Gigliotti in front of the
12 luncheonette on June 2nd, right?

13 A Yes.

14 Q Remember, when you had the transmitter on you?

15 A Yes.

16 Q Did you tell the Grand Jury at that point that
17 the man that you met in the car was the same man as you met
18 outside the luncheonette?

19 A Was this -- the question I don't understand.
20 Was this question -- are you asking me did I testify before
21 I had the tapes on or was it after?

22 Q No. This is on June 13, 1972. Look at the
23 outside page.

24 A I know what I said to be the truth here about
25 no meeting Mr. Gigliotti by -- Gigliotti by the cemetery. I

1 3

2 met Gigliotti the second time when I had put tapes on.

3 Q Now, you say you said that you met Gigliotti at
4 the cemetery in that Grand Jury testimony?

5 A Yes.

6 Q Look through it. Take your time, tell me where
7 you say you met Mr. Gigliotti at the cemetery.8 A I said that I -- the question I believe was
9 asked if there was a new man, and I said, yes, there was.
10 And who was the new man? And I said, Gigliotti was the new
11 man.

12 Q You said that?

13 A I didn't say Gigliotti, I said there was a new
14 man when I was shown who the new man was, the new man was
15 Gigliotti.16 Q And you testified that way before the Grand
17 Jury, is that what you are telling us?18 A I testified once again in front of the Grand
19 Jury. I believe the question was asked who was it. I said
20 it was a new man.21 Q Okay. Let's go back for just a minute. When
22 did you tell the Grand Jury that it was a new man?

23 A When did I tell the Grand Jury?

24 Q Yes. I don't know the date.

25 Q Okay. When you look at your testimony now on

1 9
2 Page 13 that you have in front of you -- Okay -- is there any
3 doubt in your mind that you testified there before the Grand
4 Jury on June 13th, on Page 13 about that incident outside the
5 cemetery?

6 A I can only say to you, sir --

7 MR. NEWMAN: Judge, I think that calls for a
8 yes or no answer.

9 A I can't be sure about dates.

10 THE COURT: He says he can't be sure about
11 dates.

12 Q Go back to Page 12, Mr. DiPalma, the bottom.

13 A Yes.

14 Q Look at the bottom question.

15 A Yes.

16 Q "On Monday, May the 15th of this year, did there
17 come a time when you saw Ciro parked in a Mercury automobile
18 at the corner of 85th Street alongside a cemetery?" Do you
19 remember that incident?

20 A Yes.

21 Q Is the date bothering you, you're not sure it
22 was May 15th?

23 A The date of the year may bother me, but the
24 time doesn't.

25 Q So you think it may have been '71?

1
2 A It could have been '71 or it could have been
3 1972. I told you I don't remember the date of the ~~trial~~

4 Q That being the situation, now go on to read
5 the next question and answer to yourself.

6 "Question: That's within the past month or so?

7 "Answer: Yes."

8 Does that refresh your recollection now that it
9 was 1972?

10 A I still say I'm not sure. If it's '72 or '71,
11 but it had to be probably 1972.

12 Q Next question:

13 "Question: In other words, it was not 1971?

14 "Answer: No, it was '72."

15 Does that refresh your recollection that it
16 was '72?

17 A I said here, in other words, it was in 1971 --
18 I believe if I said it was in 1972 it was in 1972.

19 Q So now it's May 15th, 1972 this incident, right?
20 And now you're referring before a Grand Jury on June 13, 1972.
21 Look at your testimony concerning that incident. Do you say
22 Mr. Gigliotti was the other man in the car?

23 A I didn't say that.

24 Q Did you say that the man in the car was the
25 same man you met on June 2nd in front of the luncheonette?

2 A Did I say he was --

3 Q Right there in your testimony.

4 A No, I don't say here.

5 Q Turn to Page 17 and look at Line 9.

6 A Yes.

7 Q And Mr. Naftalis Thursday afternoon asked you
8 about this question and read it it to you:

9 "Question: Have you talked about that guy at
10 all today?"

11 Do you know which guy they're talking about?

12 MR. NAFTALIS: Your Honor, I object. That's
13 not the complete question. That's the beginning of the
14 question.

15 MR. NEWMAN: I understand that. That's not
16 what I'm asking him.

17 THE COURT: I'll let him ask it, but be mindful
18 of what I said to you at the side bar.

19 Q Go back to the previous question so we know
20 what we're talking about. Go back to Line 3 on Page 17.

21 A Yes.

22 Q Do you see the question:

23 "Question: Where did you go to meet Ciro,
24 what's the first place you went to ?

25 "Answer: I went to the luncheonette on Avenue

1 11a

2 X."

3 Do you remember that question and that answer?

4 A Yes.

GR fls.5

6 (Continued on next page.)

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DiPalma - recross - Newman

RE-CROSS-EXAMINATION

BY MR. NEWMAN (Cont'd):

Q Okay.

"Question: After you went to the luncheonette, at Avenue X, were you met by anybody?

"Answer: Yes, I met another guy there."

Do you remember that?

A Yes.

Q Now, are we talking in those two questions and answers about the incident on June 2, 1972?

A We are talking about the incident, I believe, with the tape.

Q That's June 2, 1972?

A Yes.

MR. NEWMAN: Can we have a stipulation on that, Mr. Naftali?

MR. NAFTALI: I'll stipulate.

MR. NEWMAN: Okay.

Q "Question" --Now, reading from line 9 --

"Have you talked about that guy at all today? Is he one of the unknown persons you referred to in your answers, either the guy who used to get the money at the luncheonette or either of the two men inside the cycle shop?

"Answer: No, he's not."

Were you asked that question and did you make that answer?

A Yes.

Q All right. Taking that question itself, when they talk about "Have you talked about that guy at all today, did you understand that to mean the guy they were referring to as the guy you met outside the luncheonette on June 2nd?

A They were talking to me, that was the guy that I met by the cemetery and that's the guy I met June 2nd outside the luncheonette.

Q So, in other words, are you telling me then by that question -- by that question, you took it to mean that they were talking about the guy you met outside the cemetery and the guy you met outside the luncheonette as being one and the same person?

A No.

Q Tell us what you meant.

A What I mean here is that I said, "No," to this question meaning that I didn't give him any money, no.

I did not give him any money. What I mean is that I seen this man by the cemetery in a car. I seen this man on June 2nd whenever that date was, when I came to the tapes.

Other than that, that's all I could tell you.

Q So, then, I understand it correctly, with your permission, may I read that question and answer one more time, Judge.

THE COURT: Yes.

Q Do I take it to mean, sir, so that I understand you correctly:

"Question: Have you talked about that guy at all today? Is he one of the unknown persons you referred to in your answers, either the guy who used to get the money at the luncheonette or either of the two men inside the cycle shop?

And your answer is, "No, he's not," that you meant by that,,and stop me if I'm wrong, you mean by that that I was one and the same person as the person you met outside the cemetery?

A I met -- I meant in my -- I meant in -- that this guy was the person that I met at the cemetery and the person that I met by the candy -- luncheonette that day.

Q As one and the same person?

A Yes.

Q That's what you meant by that question and answer?

A Yes.

Q Let's go on.

1
2 "Question:" -- reading from line 15 -- "This is
3 a new person?

4 "Answer: A new person."

5 By that did you also mean that the guy you met
6 in the automobile and the guy you met in the luncheonette
7 was one and the same person; is that your testimony?

8 A Could you -- I don't understand when you say one
9 and the same. I mean, I'd like -- if you don't mind, I'd
10 like to answer like this.

11 Is this a new man that he met at the time? Is
12 that what you are talking about?

13 One of the same persons. In other words, this
14 is the same person that I met by the cemetery. This was
15 the same person I met by the luncheonette. That's what I
16 meant by new person.

17 Q So, in other words, the question;--

18 "This is a new person?

19 "Answer: A new person."

20 -- means you're talking about the same person that
21 you met at the cemetery and at the luncheonette?

22 Now, there is no doubt in your mind, is there,
23 that that day earlier on June 13, 1972, when you were before
24 the Grand Jury, and I showed you page 13, you were asked
25 about that incident at the cemetery and you were asked about

1
2 the man; right? And in this question here on page 12, which
3 begins, "Have you talked about that guy at all today," and
4 your answer, "No," your telling us means you were -- the
5 answer is not so?

6 A I'm telling you that I seen this man again
7 by the cemetery in the car and I seen him again by the lun-
8 cheonette.

9 Q And let me ask you this.

10 In your testimony of June 13th, after both of
11 these events, did you ever say that to a Grand Jury, that
12 this is one and the same person?

13 A Did this happen June 13th, after the incident
14 with the tapes?

15 Q Absolutely.

16 MR. NEWMAN: Would you stipulate to that, that
17 the testimony was on June 13th, Mr. Naftalis?

18 MR. NAFTALIS: I'll stipulate.

19 THE WITNESS: That's all I could tell you, I
20 met the man twice.

21 Q That's what you intended to mean by this testi-
22 mony, is that the idea?

23 A Well, when Mr. Murphy asked me this question,
24 he showed me a picture of that man.

25 Q Take a look at that Grand Jury testimony and

1
2 see if there is any reference in there to Mr. Murphy showing
3 you a picture of any man.

4 A They showed me a picture, I believe.

5 Q You said Mr. Muprhy -- you just told us under
6 oath that --

7 MR. NAFTALIS: Your Honor, I object.

8 Mr. Newman is shouting and harassing this wit-
9 ness once again.

10 MR. NEWMAN: I'm sorry.

11 THE COURT: You don't have to raise your voice.

12 THE WITNESS: I was shown a picture of Gigliotti
13 and -- by the questions, "Is this" -- I believe, the
14 new man.

15 BY MR. NEWMAN:

16 Q Now --

17 A I believe it was a new man but I seen his face
18 by the picture and I remember seeing him by the luncheonette.

19 Okay.

20 Q Are you finished?

21 A Yes.

22 Q Would you look through that testimony of
23 June 13th and show me any reference to Mr. Murphy showing
24 you a picture of Mr. Gigliotti?

25 Take all the time you want, or anybody else.

1

2

A No.

3

4

Q Is there any picture shown to you by Mr. Murphy there?

5

A No.

6

7

Q Now, let's go to your testimony on April 18, 1973, with Mr. Naftalis.

8

A What page?

9

Q Look at page 3.

10

11

THE COURT: I don't know that you're looking at the same thing. I think he's looking at June 13th.

12

13

MR. NEWMAN: Oh. May we have the other transcript? I'm sorry. I didn't realize that, your Honor.

14

BY MR. NEWMAN:

15

16

17

Q I'm showing you now Exhibit 350\$, a copy of it. This is Grand Jury testimony that you gave on April 18, 1973, and you were questioned by Mr. Naftalis.

18

Do you remember that, sir?

19

A Yes.

20

Q All right. Look at page 3.

21

A You want me to read this?

22

Q Just read it to yourself.

23

Let me know when you're finished.

24

Did you finish it, sir?

25

A Yes.

1
2 Q Do you recall now as -- is your recollection
3 refreshed that when you appeared on April 18th of 1973, with
4 Mr. Naftalis, he read to you all of your prior testimony and
5 the other two occasions before the Grand Jury?

6 A Yes.

7 Q And he asked you whether if you had to give
8 those -- withdrawn.

9 Whether you were asked those question and -- again
10 -- and to give those answers, would your answers be the
11 same?

12 A Yes.

13 Q Do you remember that? Did you tell him at that
14 time, sir, on April 18, 1973, that the man in the car at the
15 cemetery and the man you met outside the luncheonette was
16 one and the same man?

17 A Yes.

18 Q You did?

19 Show it to me where you said that to him.

20 A Doesn't say it.

21 Q And if it doesn't say it, am I correct in as-
22 suming that it is because you didn't say it?

23 A I believe I said it but I'm nor sure --

24 Q You think they left it out of the Grand Jury
25 testimony?

A No.

Q And you told us on Thursday afternoon and I read it to you that what you said then before the Grand Jury in 1972 and '73 was the truth?

A Yes.

Q Right?

A Yes.

Q You don't want to change that, do you?

A No, sir.

MR. NEWMAN: Nothing further of this witness.

MR. LA ROSSA: Judge, I forgot just one question and I mean just one. I'll do it any way your Honor wants.

THE COURT: It's up to Mr. Naftalis. It's his turn.

MR. NAFTALIS: Your Honor, I object. I have no more redirect.

I think the witness has been on the stand long enough. Mr. LaRossa and Mr. Newman have had their chances.

MR. LA ROSSA: Absolutely, but I forgot one question and only one question.

THE COURT: All right. Come up here. I'll listen. Come up.

1 16

2 that you had seen Mr. Riccardi one time prior to that Memorial
3 Day week-end?

4 MR. NAFTALIS: Where are you referring to, Mr.
5 LaRossa?

6 MR. LA ROSSA: I'm asking the question.

7 A That I had seen him before, yes.

8 Q One occasion?

9 A I had seen him a couple of times.

10 Q Did you tell them that it was only once?

11 A I don't remember.

12 Q Was it more than once as you sit there now?

13 A Yes, a few times.

14 Q On any occasion did you have conversations with
15 him?

16 A No.

17 Q On any occasion was he anything but calm?

18 A No.

19 MR. LA ROSSA: Thank you, Mrs. DiPalma.

20 I have nothing further.

21 MR. NEWMAN: I have no questions, Judge.

22 MR. NAFTALIS: No redirect, your Honor.

23 THE COURT: All right. You may step down.

24 Thank you.

25 MR. NAFTALIS: YOur Honor, the government rests.

1 17

THE COURT: All right, ladies and gentlemen,
we will take a five minute morning recess. Don't dis-
cuss the case.

4

(The following occurred in the absence of the
jury.)

5

6

MR. NEWMAN: The lady is waiting for you, Mr.
Naftalis.

7

8

9

10

MR. LA ROSSA: May I take a two minute recess
before -- either that or -- if we won't be too long
would you give me a few moments after that?

11

THE COURT: Go ahead. I'll wait for you.

12

MR. NAFTALIS: Are you planning to call Mr.

13

DiPalma.

14

MR. LA ROSSA: I'd like to call him, please.

15

(Recess taken)

16 IG fls.

17

(Continued on next page.)

18

19

20

21

22

23

24

25

G-ho 1 (The following continued in the absence of
2 the jury:)

3 MR. NEWMAN: May we all be excused for a couple
4 of minutes?

5 THE COURT: No. I'd rather not. I'd rather
6 get this part of it over with.

7 We are going to have motions, I assume.

8 MR. La ROSSA: May I proceed?

9 THE COURT: Yes.

10 MR. La ROSSA: May it please the Court, the
11 defendant Ciro Riccardi moves under Rule 29 for a
12 judgment of acquittal under Counts One and Two.

13 As to Count One I would like to bring to the
14 Court's attention that the way that the indictment --
15 that the words that the indictment show, state as
16 follows:

17 "That Ciro Riccardi knowingly did make extor-
18 tionate extensions of credit to Frank Di Palma in the
19 total amount of approximately \$3500, Ciro Riccardi
20 and Frank Di Palma understanding at the time said
21 extension of credit was made that delay in making and
22 failure to make re-payment of same could result in the
23 use of violence and other criminal means to cause harm
24 to the person of Frank Di Palma."

25 I submit to the Court that it is my recollection

2 1 of the testimony -- and I tried to go over it over
2 the weekend, to find any reference to any conversation
3 between Mr. Riccardi and Mr. Di Palma at the time of
4 the making of the loans, where there was any reference
5 to what would occur if the loan was not repaid.

6 THE COURT: Correct me if I am wrong. I think
7 you may have a point with respect to the initial loan
8 and with respect to the making of the additional loan
9 but there was one point when he went in and asked for
10 an extension of time, I think, in December or January,
11 1971 or 1972.

12 MR. La ROSSA: Yes, sir, but that is Count Two,
13 the collection.

14 THE COURT: Well, he asked for an extension of
15 time and it is my understanding under the statute
16 that if either there is a loan, the making of a loan
17 or a renewal or extension of the loan and threats are
18 made it is sufficient.

19 I take it that is your theory, Mr. Naftalis?

20 MR. NAFTALIS: That is correct, your Honor.

21 In addition, the Government states that the
22 status of the agreement doesn't have to be a sit-down
23 agreement orally or written to that effect.

24 THE COURT: I don't remember any evidence
25 which said that at the time the first three advances

3
1 were made that there were any threats or anything that
2 would indicate to Mr. Di Palma that he was in fear of
3 any bodily harm.

4 However, then he went back to get some additional
5 time on the payment and some of the vig -- I may be
6 wrong -- I made a mental note as it went by -- and I
7 think it was brought out on redirect, as I recall that --

8 MR. La ROSSA: Talking about the meeting at
9 the --

10 THE COURT: (Continuing) -- bicycle shop --

11 MR. La ROSSA: That was redirect --

12 THE COURT: (Continuing) -- where there were
13 some threats if he didn't pay.

14 But, the extension was granted and I think that
15 is sufficient to get them by the motion to dismiss.

16 MR. La ROSSA: Well, your Honor will note --
17 I hope I am being specific because the indictment
18 reads, with respect to the \$3500 and it refers, in my
19 opinion, to the time of the making of the loan --

20 THE COURT: No, it doesn't. It says "the
21 extension of credit."

22 If it said "the making of the loan" that would
23 be one thing. "Extension of credit" is a term of art.

24 The extension of credit is in effect the
25 renewal of the loan. Extension of credit is defined,

4 1 "An extension of credit is to make or renew any loan
2 or to enter into any agreement tacit or express whereby
3 repayment... may or will be deferred" and they agreed
4 to defer it at the bicycle shop meeting and there was a
5 threat made.

6 So, on that ground, as to that, I will have to
7 say that they have made out a prima facie case and
8 your motion cannot be granted. It is a question of
9 fact for the jury.

10 MR. LA ROSSA: My motion is to Count Two as
11 well.

12 THE COURT: Yes. I will deny that.

13 MR. La ROSSA: In the interest of saving time
14 may I start to round up the defense witnesses? I
15 believe Mr. Newman's argument is a bit more extensive.

16 THE COURT: If it is all right with your client.

17 MR. La ROSSA: Is it all right with you?

18 THE DEFENDANT RICCARDI: Yes.

19 MR. NEWMAN: Before I address my motion to
20 dismiss under Rule 29 I ask your Honor to consider
21 an application which I made and which your Honor
22 considered premature. I would re-make it, so to speak--

23 THE COURT: Wait a minute.

24 My response to Mr. La Rossa does not allow you
25 to go out, Mr. Riccardi.

5 1 MR. NEWMAN: I will get him.

2 (Whereupon, the defendant Riccardi reentered
3 the courtroom.)

4 THE COURT: You cannot go, Mr. Riccardi. I gave
5 counsel permission, not you.

6 THE DEFENDANT RICCARDI: Oh, I'm sorry, your
7 Honor.

8 MR. NEWMAN: I would ask your Honor to permit
9 me to re-move to dismiss on the ground that my client's
10 constitutional rights were violated in that, in my
11 examination of the Grand Jury minutes, once again, I
12 failed to find any reference at all to either my client
13 by name, description, or even if there is any reference
14 or there is a place where it can be held referable
15 to him, any testimony or evidence concerning illegal
16 participation on his part before the Grand Jury.

17 In my reading of the Grand Jury minutes I don't
18 see either the transcript of the alleged conversation
19 of June 2nd or any tape-recording of that conversation
20 played before the Grand Jury.

21 So, at most, what you have is, taking the
22 testimony best from the point of view of the prosecu-
23 tion, you have the meeting on May 15 outside the
24 cemetery with no identification of my client; the
25 June 2nd meeting outside the luncheonette with no

6 1 identification in the record that the man in the car
2 and the man in front of the luncheonette is the same
3 person, with some colloquy taking place for the first
4 and only time on June 2nd in front of the luncheonette.

5 That man is not identified but assume for a
6 moment he is, there was nothing said in the way of
7 a criminal nature.

8 He never, obviously, waived indictment and
9 there is no other evidence in this record -- when I
10 say this record, I'm sorry -- Grand Jury record, either
11 indicting him, indicating he is involved in any
12 criminal activity and I think he was deprived of his
13 constitutional rights.

14 I tried to get to the library to look at a
15 case to cite to your Honor but I didn't have enough
16 time this morning.

17 The case is U.S. v. Estapa out of the Second
18 Circuit and has to do with the quality and weight of
19 evidence before a Grand Jury.

20 With your permission during luncheon recess I
21 will dig it out.

22 THE COURT: That may be too late.

23 MR. NAFTALIS: If I may, I indicated earlier
24 when Mr. Newman first raised the question --

25 THE COURT: Let me ask you a couple of questions.

7 1 Was the tape played to the Grand Jury?

2 MR. NAFTALIS: I'm not certain. I don't believe
3 it was.

4 THE COURT: In my quick lookthrough that
5 testimony on June 15th -- have you got a copy of that --

6 MR. NEWMAN: June 13, sir.

7 MR. NAFTALIS: Yes, I do.

8 MR. NEWMAN: Would you take my copy. I didn't
9 change it.

10 (Document handed to Court.)

11 THE COURT: Isn't he identified in the second
12 go-around by name?

13 MR. NEWMAN: No, sir, he is not -- no place.

14 MR. NAFTALIS: Which transcript are you refer-
15 ring to?

16 MR. NEWMAN: The Judge is looking at June 13,
17 Mr. Naftalis.

18 THE COURT: Where did the Grand Jury get the
19 name of Gigliotti?

20 MR. NEWMAN: I'm sorry, sir?

21 THE COURT: Where did the Grand Jury get the
22 name of Gigliotti if not from this fellow?

23 MR. NEWMAN: I don't know, Judge.

24 THE COURT: Can you give me an answer to that?

25 MR. NAFTALIS: He was -- subsequent to these

8 1 meetings -- his identity was identified by the FBI
2 through a check of the police records.

3 THE COURT: Well, I mean, did the FBI testify
4 before the Grand Jury?

5 MR. NAFTALIS: I believe there was an agent's
6 testimony but I'm not certain. I wasn't involved in
7 the Grand Jury proceedings.

8 MR. NEWMAN: Maybe I am laboring under -- I
9 never saw it --

10 MR. NAFTALIS: Why not let me finish?

11 THE COURT: Well, this testimony before the
12 Grand Jury --

13 MR. NEWMAN: I was looking for that testimony.

14 THE COURT: You're not entitled to it.

15 MR. NEWMAN: Not for me -- to be presented to
16 your Honor, obviously.

17 MR. NAFTALIS: As I indicated to the Court
18 and started to at an earlier point, I have researched
19 the cases and I would like to quote the law including
20 the evaluation of the Supreme Court as to these cir-
21 cumstances.

22 As I indicated earlier it is Costello vs.
23 the United States 350 U.S. 359 (1956 at 363:

24 "If indictments were to be held open to
25 challenge on the ground that there was inadequate or

9 1 incompetent evidence before the Grand Jury, the
2 resulting delay would be great indeed. The result of
3 such a rule would be that before trial on the merits
4 a defendant could always insist on a kind of preliminary
5 trial to determine the competency and adequacy of the
6 evidence before the Grand Jury. This is not required
7 by the Fifth Amendment. An indictment returned by a
8 legally constituted unbiased Grand Jury with an
9 information drawn by the prosecutor, if valid on its
10 face, is enough to call for trial of the charges on
11 the merits. The Fifth Amendment requires nothing
12 more."

13 I also cite *Lawn versus U.S.* 355 U.S. 339 (1958).

14 THE COURT: I thought *Lawn* was the prosecution
15 for failure to file a misdemeanor.

16 MR. NAFTALIS: I didn't hear that.

17 THE COURT: Wasn't *Lawn* prosecution for failure
18 to file a misdemeanor? That's 20 years old. Isn't it
19 an information?

20 MR. NAFTALIS: Yes, I believe it was. But, there
21 is language to that effect in that opinion as well.

22 U.S. v. *Tane* 329 F. 2nd 848 (2nd Cir. 1964)
23 quoting in part, page 853:

24 "A defendant has no right to have an indictment
25 dismissed merely because incompetent or inadequate

10 1 evidence was presented to the Grand Jury."

2 Your Honor, I also cite --

3 THE COURT: Mr. Newman appreciates all that
4 and so do I. But, what he said was -- and it is
5 puzzling to me -- is how the Grand Jury came up with
6 the name of Gigliotti.

Ghb 7 MR. NAFTALIS: The Government supplied them with
8 that name.

9 The Government drafts the indictment. That is
10 known to the defense and the Court.

11 THE COURT: I understand that but based on no
12 identification, no nothing -- I mean, did Mr. Ruffels
13 take the stand before the Grand Jury and say "This
14 third man" --

15 MR. NAFTALIS: I don't believe he did --

16 THE COURT: (Continuing) -- "this second man is
17 Gigliotti"? That's what Mr. Newman is asking and I
18 think it is possibly a bona fide question

19 What he is saying, if all you have got is what
20 you have here and Mr. Murphy went in and said "The
21 other guy involved is Gigliotti. Return an indictment
22 against him," he says that is improper and I am not
23 sure it is not improper. That would bother me.

24 If the FBI went in and testified that the third
25 man or his identity is based on the investigation that

1 was done on Mr. Gigliotti, I don't think I'd have a
2 problem with it.

3 MR. NAFTALIS: I don't believe it is necessary
4 and Mr. Newman has not presented any law on the question
5 of -- whether he got here late this morning is beside
6 the point -- he knew he would raise the issues some
7 time ago as to the status of the law in the Supreme
8 Court and the Circuit as to whether or not "inadequate"
9 or "incompetent" is sufficient. And, whether or not
10 the defendants are named by the witnesses per se, I
11 don't believe is a requirement and there is no law
12 citing that it should be so. Perhaps it should be so
13 but we cannot speculate. Mr. Newman has presented no
14 case to this effect.

15 MR. NEWMAN: Costello, a 2nd Circuit case, dealt
16 with hearsay and the question litigated in Costello
17 was hearsay testimony of an FBI agent or an Internal
18 Revenue Service Agent in Costello and testifying
19 based on interviews and was that sufficient and
20 competent.

21 Then, they went into the question, if an agent
22 testifies to hearsay, is that sufficient to satisfy
23 the requirement of making out a case.

24 The Tane case had to do with wiretaps and a
25 lead furnished by electronic interception and the lead

12 1 was obviously unlawful because it was a wiretap with-
2 out court order and then the question arose, was
3 the witness produced as a result of that lead, was
4 he a proper witness.

5 The Schwartz case is a handwriting case and
6 the question there was whether you could litigate the
7 question of handwriting and the Fourth and Fifth
8 Amendment questions while a Grand Jury is sitting.

9 The way it developed in the 2nd Circuit, every-
10 body followed Costello until Judge Weinstein ruled in
11 Umens -- it is either U-m-a-n-s or U-m-e-n-s -- indicat-
12 ing that no longer was the 2nd Circuit and particularly
13 the Eastern District going to countenance the presen-
14 tation of cases through hearsay witnesses.

15 At that point they allowed Mr. Hoey then
16 United States Attorney, to come before the Court and
17 indicate that that would no longer be the practice.
18 It continued that way and all motions to dismiss based
19 on hearsay evidence before a Grand Jury were denied
20 if it took place prior to Umens.

21 Then, Estapa came down indicating a departure
22 from Costello. You had to put a lay witness before
23 the Grand Jury to implicate a defendant.

24 We have nothing indicating the identity of
25 Gigliotti. That is number one.

13 1 Number two, unlawful acts of Gigliotti -- there
2 is no indication of that.

3 If that doesn't deprive him of his rights to
4 have his case presented to the Grand Jury then I don't
5 know what does.

6 They could just as easily have said "that guy
7 Newman" or, if you pardon the use of your name "that
8 guy Platt should be indicted. He's the third guy."

9 MR. NAFTALIS: Mr. Newman fails to recognize
10 that Mr. Di Palma testified in the Grand Jury as to
11 what he saw and what occurred. That is not hearsay.

12 THE COURT: But he didn't identify anybody.
13 That is the point. Somebody else went into the Grand
14 Jury and said "That fellow involved in the cemetery
15 incident was Mr. Gigliotti and that fellow who had
16 that conversation with him" -- referred to on page 17 --
17 "was Mr. Gigliotti. So, put his name in the indictment,
18 Grand Jury" and they said "All right."

19 But he is saying there is nobody, apart from
20 maybe Mr. Murphy, who did that.

21 MR. NAFTALIS: But where is the requirement
22 on the Government's part to do that?

23 Mr. Newman stated that he feels there should
24 be but there is no citation of law --

25 THE COURT: He says the Estapa case so holds.

14 1 MR. NAFTALIS: But we had direct testimony.

2 We had Di Palma before the Grand Jury.

3 THE COURT: He is not arguing that you didn't
4 prove a prima facie case in this court.

5 He is saying this man was not indicted properly;
6 that there is no evidence under which he could have
7 been indicted and he has been deprived of his consti-
8 tutional right to be indicted by a Grand Jury.

9 MR. NAFTALIS: I submit he has been and that
10 the evidence as required under Costello has been met
11 and Mr. Newman has spoken here, eloquently, I admit,
12 but has cited no law.

13 THE COURT: He cites Estapa which I guess I
14 have to read.

15 But, in any event, if what you say is true,
16 Mr. Newman, that is not a question I have to decide
17 forthwith. I can decide that up to and even after
18 the jury deliberates.

19 If what you say is so it may be a lack of
20 jurisdiction, right? I can do some research on it.

21 MR. NEWMAN: I would say it is within your
22 jurisdiction to decide the matter at any time. However,
23 I would ask you to decide the matter now for obvious
24 reasons.

25 THE COURT: I have to take a look at what the

15 1 law is on the subject.

2 If the Costello case is good and a United States
3 Attorney can go in and give hearsay information on a
4 question as vital as this, well --

5 MR. NEWMAN: Unless there are minutes I am
6 missing, I don't even see Murphy doing it.

7 THE COURT: Somebody must have.

8 MR. NEWMAN: Look, I have no pre-signs.
9 Obviously they didn't take me into their confidence
10 when the indictment was drawn.

11 I suggest very clearly to you, Judge, that what
12 was done here is that somebody assumed they knew the
13 identity of the third person and went and drew the
14 indictment with his name in it.

15 THE COURT: Well, I don't ascribe quite that
16 much arrogance and power to the United States Attorney.

17 MR. NEWMAN: I don't think it is out of
18 arrogance or power.

19 THE COURT: We didn't operate that way and I
20 don't assume they do it today.

21 MR. NEWMAN: I can only go on what I have and
22 that is why I asked it be produced for your Honor.

23 THE COURT: Are there any other transcripts?

24 MR. NAFTALIS: No.

25 THE COURT: Do you have a list of the witnesses

6
1 testifying before the Grand Jury?

2 MR. NAFTALIS: They are not kept on a case by
3 case basis.

4 THE COURT: So, you don't know --

5 MR. NAFTALIS: I know when I took over the
6 case from an examination of the file what occurred up
7 to that point.

8 THE COURT: Maybe we will have to have a hearing
9 with Mr. Murphy. Is he around?

10 MR. NAFTALIS: He is now in private practice
11 in Cranston, Rhode Island.

12 THE COURT: Well, nevertheless, perhaps we
13 will need a hearing to find out how it happened.

14 MR. NAFTALIS: Before we get to the state of
15 a hearing --

16 THE COURT: You are talking about, essentially,
17 a jurisdictional question.

18 He is right. If some fellow goes in and gives
19 testimony that A and B were involved in a transaction
20 and he identifies A as Ciro Riccardi and never iden-
21 tifies B and all that appears in this is that B was
22 present at the time that A made a threat in the car
23 and then B may or may not have said -- it's not
24 terribly clear from page 17 who he is talking about.

25 B says:

1 "'Do you have the money?'"

2 Di Palma says "No, I haven't. I'd like to see
3 Zero. I wanted to see Zero, talk to him. He said to
4 me that Zero was at a friend's house -- some guy's
5 house and, 'Would you like to come in my car and I'll
6 take you over there.' I said, 'No, I don't want to go
7 in your car. Just tell him to meet me here by the
8 store.' He said to me -- then it was going to work
9 out where I wouldn't see Zero at all and we made
10 arrangements that I told him that I'd meet him in
11 front of Brown's Furniture, Bram's Furniture Store
12 near Neil's across McDonald Avenue by way of 1st or
13 West 2nd Street. I walked it down there while he went
14 to get Zero by Zero's friend's house."

15 The other man wasn't identified. Nobody was
16 identified. That's not even tied into the original
17 guy as far as the Grand Jury is concerned. That could
18 be three separate people. Mr. Newman says that might
19 be you, me and him for all we know.

20 MR. NEWMAN: Mr. Naftalis, do you have an alibi
21 for that day?

22 MR. NAFTALIS: I was in Europe running in the
23 Olympics. That's about the best I can come up with.

24 THE COURT: I don't have to decide that motion
25 right now. I will reserve on that motion.

18 1 You get me the Estapa citation.

2 MR. NEWMAN: Yes, sir.

3 Can I continue?

4 THE COURT: Yes.

5 MR. NEWMAN: I now move insofar as Count Two is
6 concerned as to the defendant Ronnie Gigliotti to
7 dismiss under Rule 29 that no prima facie case was made
8 and taking the evidence, as we must, most favorable
9 to the prosecution, we have the testimony concerning
10 the meeting of May 15 in the car outside the cemetery
11 and on direct testimony -- and if I quote wrong I am
12 sure it will be corrected but I don't have the minutes
13 in front of me -- would you bear with me for a moment
14 with a statement on direct examination being made by
15 Mr. Di Palma that this man in the automobile says "Does
16 not pay to get hurt. Pay him or do what you can to
17 pay him."

18 Then, the meeting June 2, 1972, outside the
19 luncheonette and for that we have the transcript of
20 the tape, so to speak, and realizing this isn't the
21 best evidence, the tape is, but, for the purpose of
22 this motion I will be bound by what is contained in
23 the transcript for ease of reference.

24 Assuming that insofar as Ronnie Gigliotti is
25 concerned this June 2nd transcript is admissible, let's

19 1 assume that for the sake of argument, for a moment,
2 although I raised before the question of admissibility
3 of this transcript within the confines of the indictment,
4 if you read this transcript taken with the conversation
5 in the car it doesn't make out a prima facie case in
6 aiding and abetting Ciro Riccardo for the purpose of
7 the alleged extortion.

8 If you remember, on cross-examination with
9 Mr. Di Palma, at an earlier and happier day than today,
10 he indicated to me there was no testimony prior to his
11 appearance in court as to the second man in the car
12 saying even a single word in the Grand Jury; in his
13 statement with Mr. Ruffels; never any reference to
14 that man saying anything.

15 Then, when he came back here on redirect all
16 he testified to on redirect by Mr. Naftalis, was that
17 this man was the same man in the car and whom he
18 met on June 2nd.

19 But, on redirect there was no reference to the
20 man in the car saying anything. When I pressed him on
21 it and indicated to him there was nothing in the
22 Grand Jury indicating that the man said anything he
23 started to hedge and indicated to me that the man
24 said "O.K., go," and I think your Honor asked him,
25 "Did he say anything," and he said "The man said 'Go'

20
1 'Leave'".

2 THE COURT: I followed the testimony but the
3 fact of the matter is, his first statement is there
4 for the jury to consider and taking the testimony most
5 favorable to the Government -- or even leaving that
6 first statement aside, he heard what Mr. Riccardi is
7 alleged to have said to him from the car. Then, with
8 that knowledge he -- it would be the Government's
9 theory, as I understand it -- that he aided and
10 abetted the collection process by volunteering and
11 actually setting up the meeting between these two
12 and actually participated in the collection process.

13 At the end of the tape, as I recall the
14 statements by him to Di Palma, at one point there is
15 an indication that Riccardi told him to pull a gun
16 and hold it at his head.

17 Now, when you get all of that together I think
18 there is enough to make out a charge of being more
19 than just present and observing the operation.

20 Indeed, it shows that he knew just what was
21 going on and helped in the process.

22 It is not an awful lot but certainly it is
23 aiding and abetting in the commission of a crime.

24 (Continued on next page.)
25

1 MR. NEWMAN: I would just like to submit for
2 your Honor's consideration that by allowing in the
3 June 2nd conversation, for example, I think they are
4 getting -- when I say "they" I think the Government
5 is in effect getting the benefit of a conspiracy
6 count, really, without having pled a conspiracy count.

7 THE COURT: Conspiracy implies an agreement to
8 do this. But they are not alleging any sort of an
9 agreement between Mr. Riccardi and Mr. Gigliotti

10 This is just what Mr. Riccardi -- what
11 Mr. Riccardi was doing and Mr. Gigliotti was helping
12 him to do it, that is what they are saying.

13 MR. NEWMAN: What they are really getting, they
14 are getting the benefit as if they had pled a con-
15 spiracy count because they are getting really a
16 ratification, if I understand your Honor's reasoning.

17 THE COURT: They are saying the dates are
18 approximate, and being approximate the aiding and
19 abetting can go maybe a month or two months after the
20 event or may a month or two months before the event
21 named in the indictment. I think the law is clear on
22 that. It has been that way, as I recall it, for 25
23 years. You never had to be that precise, particularly
24 when you are dealing with a large amount of time like
25 this.

2 1 MR. NEWMAN: The reason I was troubled by it,
2 Judge, I am not troubled by the basic principal, so to
3 speak, of exactitude of dates. What I am troubled by
4 is the theory that is being utilized, as I see it, to
5 keep Mr. Gigliotti in the case, and it is sort of a
6 boot strap situation, saying in effect you are not
7 involved initially, we didn't charge you in a conspi-
8 racy. We are saying that by your acts of June 2nd --
9 the language is mine, Judge -- I agree with you that
10 you have not used it -- by your acts of June 2nd you
11 have ratified something that existed before, and we
12 recognize -- we have not put in a conspiracy count
13 which would clearly entitle you to prove ratification,
14 so to speak, and have you adopt all of the prior acts,
15 but we are saying without that conspiracy count we are
16 able to show June 2nd, because it is just an imprecise
17 date and that in effect gets you in a position of
18 having ratified what went before.

19 THE COURT: It is not ratification. This is
20 a part of the collection process. They are saying that
21 even on June 2nd they are entitled to collect this
22 money, and I think the tape shows that, that
23 Mr. Riccardi was trying to collect the money and
24 Mr. Gigliotti was aiding and abetting him in doing it.
25 And he knew from the prior time that Mr. Riccardi was

3 1 using threats of force and he knew during the course
2 of this that he was using it, and he did not desist
3 from the aiding and abetting and he went on and at the
4 end of it he actually used words directed to
5 Mr. Di Palma in an attempt to make him produce money
6 for Mr. Riccardi, which I think, when you wrap it
7 alltogether, they say that constitutes aiding and
8 abetting in the commission of this crime.

9 I am paraphrasing what I think Mr. Naftalis
10 would say. That is the way I analyzed it.

11 Is that essentially what your position is?

12 MR. NAFTALIS: It is a pretty fair representa-
13 tion of it, your Honor.

14 MR. NEWMAN: If it wasn't, it is now.

15 In any event, Judge, there is no sense of my
16 belaboring, I move to dismiss.

17 THE COURT: I deny that motion. The other
18 motion does bother me, but I don't think we have to
19 decide that now.

20 MR. NEWMAN: I am sorry to hear that.

21 THE COURT: I am going to presume the indictment
22 is regularly done until it is shown to me otherwise.
23 I think all indictments are entitled to that presump-
24 tion, but -- if the Estapa case is the law, it is a
25 Second Circuit case you say, and if it says what you

4 1 say it says, then you have a point. I assume it is too
2 late to reindict him.

3 MR. NAFTALIS: The statute has not run, your
4 Honor. It is five years.

5 THE COURT: You can reindict him then.

6 MR. NEWMAN: I take each one as it comes, Judge.

7 MR. NAFTALIS: I suspect it will be re-assigned
8 to you as a related case.

9 MR. NEWMAN: We are picking a jury already in
10 the second case when we haven't finished with the first
11 one?

12 THE COURT: Do you want some time or do you want
13 to continue?

14 MR. NEWMAN: Could I just have a brief recess?

15 THE COURT: We will take two minutes.

16 (Recess.)

17 MR. NEWMAN: Your Honor, I had given the
18 citation to your law clerk on Estapa.

19 MR. La ROSSA: Can we approach the sidebar?

20 THE COURT: Yes.

21 (Sidebar.)

22 THE COURT: Mr. La Rossa suggests that it is
23 incumbent upon me to decide the motions made by
24 Mr. Newman at the end of the Government's case. I
25 have decided his motion to dismiss for failure to prove

5 1 a prima facie case. I have denied that motion.

2 I reserve decision on the question of whether
3 Mr. Gigliotti has been properly indicted by the Grand
4 Jury, that being more of a jurisdictional type of
5 question which I can decide at any time.

6 It is a constitutional question on the question
7 of whether or not this Grand Jury had proper evidence
8 before it to indict. But that can be decided by the
9 Court of Appeals ab initio on an argument before it
10 for the first time, as I see it.

11 If the Court lacks jurisdiction to try the case,
12 it lacks jurisdiction on the subject matter.

13 MR. La ROSSA: You were aware of the fact that
14 there were Circuit Court decisions?

15 THE COURT: Let's proceed.

16 MR. La ROSSA: Before the jury comes in, if I
17 may make an offer of proof at this point, I am doing
18 it now because I didn't want to embarrass anybody in
19 front of the jury. I am going to elicit from witnesses
20 Mr. Di Palma's reputation for truth and honesty.

21 THE COURT: Under the new rules?

22 MR. La ROSSA: No. I think that there is
23 authority under the old rules as well when a witness
24 is put forward that his reputation for truthfulness
25 and honesty may be put before the jury, particularly

6 1 if it is bad.

2 MR. NAFTALIS: I don't believe there is law to
3 that effect.

4 MR. La ROSSA: Under the new rules you may, as
5 your Honor knows.

6 THE COURT: I would not be inclined to grant
7 it unless we agreed upon it at the outset of the trial.

8 MR. NAFTALIS: The Government would object to
9 that and also indicate for the record, as the Court
10 knows the new rules are not in effect yet.

11 MR. La ROSSA: I am making an offer of proof
12 that three witnesses would take the stand and be
13 asked Mr. Di Palma's reputation for truthfulness and
14 honesty in the community at both the time of the
15 incident and the present time, and your Honor is
16 stopping me from doing that?

17 THE COURT: I am saying I don't think it is
18 proper if the Government objects.

19 MR. NAFTALIS: The Government does object, your
20 Honor.

21 MR. La ROSSA: You will note my objection to
22 the Court's ruling.

23 THE COURT: I recognize the fact that if we
24 tried this case a month later, a month and a half
25 later, you would be entitled to do so.

7 1 MR. NEWMAN: Isn't there a case out of the
2 Third Circuit?

3 MR. La ROSSA: I think there have been cases in
4 the federal system permitting where a witness --

5 THE COURT: The only case I know of is where a
6 defendant takes the stand and puts his character in
7 issue. But the Government -- one of the difficulties
8 I have with the new rules, and they are going to be
9 new rules, is that in effect the Government, even
10 though the rules seem to say on the one hand that the
11 Government does not any longer vouch for their witness'
12 credibility; on the other hand they are going to be
13 vouching for him at least to the extent that you will
14 put this kind of evidence in.

15 This seems to me to manifest the inconsistency
16 in the new rules that I think is completely irrecon-
17 cilable. But maybe between all the brilliant minds on
18 the bench they can figure it out, more brilliant than
19 mine.

20 MR. La ROSSA: Thank you, sir.

21 MR. NAFTALIS: Can we state on the record who
22 these witnesses would have been?

23 THE COURT: He may not wish to disclose.

24 MR. La ROSSA: If your Honor wants that as part
25 of my offer of proof, I will, but since it is not being

8 1 allowed, I don't see why I have to do it.

2 THE COURT: Unless you withdraw your objection.

3 MR. NAFTALIS: No, your Honor.

4 Mr. La Rossa has indicated that he may or may
5 not wish to re-call Mr. Di Palma for a defense witness.
6 I hope he has been able to decide this at this point.
7 If he is going to, I would ask, unless it is going to
8 interrupt, I would ask for his theory of the evidence.

9 Mr. Di Palma called and asked to take his
10 pregnant wife home and his young daughter.

11 MR. La ROSSA: I won't go beyond the lunch break
12 without informing you.

13 (Open court)

14 (Jury present.)

15 THE COURT: Mr. La Rossa.

16 MR. La ROSSA: Defendant calls Arthur Ruffels
17 to the stand.

18 THE COURT: You are still under oath, Mr. Ruffels.

19 A R T H U R R U F F E L S , having previously been duly
20 sworn, resumed the stand and testified further as
21 follows:

22 DIRECT EXAMINATION

23 BY MR. La ROSSA:

24 Q Mr. Ruffels, you told us you have been an FBI
25 agent for some four and a half years; is that correct?

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

v.

NO. 73 CR 556

RONALD GIGLIOTTI

GOVERNMENT'S MEMORANDUM OF LAW IN OPPOSITION
TO DEFENDANT'S MOTION FOR A JUDGEMENT OF ACQUITTAL

PRELIMINARY STATEMENT

This memorandum is submitted by the United States in opposition to the Defendant's Motion made pursuant to Rule 29c of the Federal Rules of Criminal Procedure for dismissal of the indictment herein on the ground that the defendant Ronald Gigliotti alleges that he was denied his Fifth Amendment Right to have a Grand Jury consider the charges against him.

In June, 1973 a Special Grand Jury sitting in the Eastern District of New York returned Criminal Indictment No. 73 Cr. 556 against the above defendant Ronald Gigliotti and a co-defendant Ciro Riccardi. In Count One of that indictment the Grand Jury charged Ciro Riccardi with violation of Title 18, U.S.C., Section 892 for making an extortionate extension of credit. The Grand Jury did not charge defendant Gigliotti with that offense and he was unnamed in Count One of the Indictment. The Grand Jury did however charge defendant Gigliotti in Count Two of the Indictment, along with defendant Riccardi with violation of Title 18, U.S.C., Section 894 for using extortionate means to collect an extension of credit. This Indictment was brought to trial on May 19, 1975 before this Court. In compliance with the Government's obligations pursuant to Title 18, U.S.C., Section 3500 counsel for the Government submitted to Defense Counsel copies of all prior statements made by witnesses called by the Government in the course of this criminal trial.

Defense counsel claims that "while examining these materials, [he] came to the startling realization that none of these witnesses gave testimony which would implicate Ronald Gigliotti as a perpetrator of the crimes alleged". (Brief of Mr. Newman - page 2.) The Government stated on the record at that time and restates in this memorandum once again that evidence was offered to this Grand Jury concerning the criminal involvement of defendant Ronald Gigliotti in respect to this indictment. Attention is drawn to Government's Section 3500 Exhibit No. 9, Grand Jury transcript dated May 22, 1972, the testimony of Frank DiPalma. Specifically attention is drawn to page 7 of that transcript which concerns a meeting between the victim of the extortion and the two named defendants. In addition attention is drawn to Government's Section 3500 Exhibit No. 10, a Grand Jury transcript dated June 13, 1972 from witness Frank DiPalma. Specifically attention is drawn to page 13 of that transcript and more specifically to page 17 through 19 of that transcript. This latter testimony refers to a meeting between the victim DiPalma and the two defendants concerning the collection of an extension of credit. Fuller testimony from the witness DiPalma plus photographs and a sound recording of this meeting were offered by the Government during the course of the trial itself. In June, 1973 Counsel for United States submitted for consideration by the above noted Special Grand Jury the indictment described above. At the time of the submission of that indictment counsel for the Government identified Defendant Gigliotti as the perpetrator of the acts noted in the Grand Jury testimony above. Counsel asked the Grand Jury if it needed any additional identification of either defendant and the Grand Jury indicated that it needed no further identification of either defendant. Counsel for the Government indicated in his statement to the Grand Jury that the FBI had identified defendant Ronald Gigliotti as the person described by DiPalma in his Grand Jury testimony. Based on this representation by counsel for the Government and the direct testimony of the victim of the extortion crimes the Grand Jury indicted the above named defendants. United

States submits that there was sufficient non hearsay evidence before the Grand Jury to uphold this indictment. Further, ^{the} United States submits that the hearsay statement of Government counsel before the Grand Jury as to the identity of Ronald Gigliotti was labeled as hearsay and understood to be so by members of the Grand Jury at the time the indictment was voted upon. The Government further submits that the statement of the law below indicates that the Special Grand Jury had sufficient basis to indict defendant Gigliotti and that the Judgement of conviction voted by the petit jury in the criminal proceeding should stand.

There is sufficient evidence before the Grand Jury to Uphold Indictment 73 CR 556 and therefore the petit jury verdict thereon should stand.

The 5th Amendment to the Constitution states in part:

No person shall be held
to answer for a capital
or other infamous crime unless
on a presentment or indictment
of a grand jury . . .

The question of the submission of evidence concerning the presentment or indictment was examined by the Supreme Court in United States v. Costello, 350 U.S. 359 (1956). The Court noted in its opinion

. . . neither the Fifth
Amendment nor any other
Constitutional provision prescribes
the kind of evidence upon which
grand juries must act.
. . . And in 1852 Mr. Justice
Nelson on Circuit could say "No
case has been cited nor have
we been able to find any, furnishing
an authority for looking into
and revising the judgment of the grand
jury upon the evidence, for the purpose
of determining whether or not the finding
was founded upon sufficient proof. . ."
(citation omitted)

In Costello the Supreme Court was urged to establish a rule permitting defendants to challenge indictments on the ground that they are not supported by adequate or competent evidence id., 350 U.S. at 364, but the Court declined to do so, stating:

It would run counter to the whole history of the grand jury institution, in which laymen conduct their inquiries unfettered by technical rules. Neither justice nor the concept of a fair trial requires such a change. In a trial on the merits, defendants are entitled to a strict observance of all the rules designed to bring about a fair verdict. Defendants are not entitled, however, to a rule which would result in interminable delay but add nothing to the assurance of a fair trial. Ibid.

The Court set a strong policy against challenges to indictments on the ground that it was biased on what is alleged by a defendant as being inadequate and incompetent evidence before the grand jury. The Court clearly set out this policy:

If indictments were to be held open to challenge on the ground that there was inadequate or incompetent evidence before the grand jury, the resulting delay would be great indeed. The result of such a rule would be that before trial on the merits a defendant could always insist on a kind of preliminary trial to determine the competency and adequacy of the evidence before the grand jury. This is not required by the Fifth Amendment. An indictment returned by a legally constituted and unbiased grand jury, like an information drawn by the prosecutor, if valid on its face, is enough to call for trial of the charge on the merits. The Fifth Amendment requires nothing more. Id., 350 U.S. at page 363, 76 S.Ct. at page 409.

The Supreme Court most recently reaffirmed its interpretations in Costello in United States v. Calandra 94 S. Ct. 613 (1974). In Calandra the Court noted:

The grand jury's sources of information are widely drawn, and the validity of an indictment is not affected by the character of the evidence considered. Thus, an indictment valid on its face is not subject to challenge on the ground that the grand jury acted on the basis of inadequate or incompetent evidence. (citations omitted) 94 S. Ct. at 618

See also Holt v. United States 218 U.S. 245, 31 S. Ct. 2 (1910).

In this Circuit, the Court of Appeals has similarly held. See United States v. Tane 329 F.2d 848 (2d Cir. 1964); United States v. Koska, 443 F.2d 1167 (2d Cir. 1971). The Court noted in Koska:

The fact that all available witnesses were not called would not vitiate the indictment even if the grand jury had received hearsay testimony. 443 F.2d at 1169.

In this Circuit, the Court of Appeals has addressed itself to the question of exclusively using hearsay before the Grand Jury. The Court has noted the importance of avoiding undue reliance upon hearsay before a Grand Jury. The Court explained its purposes and policy thusly in United States v. Estepa, 471 F.2d 1132 (2d Cir. 1972).

There is no affirmative duty to tell the Grand Jury in haec verba that it is listening to hearsay (citation omitted) the grand jury must not be "mislead into thinking it is getting eye-witness testimony from the agent whereas it is actually being given an account whose hearsay nature is concealed. . . (citation omitted). 471 F.2d at 1136.

In Estepa the Court of Appeals found that the hearsay nature of the evidence offered was concealed from the Grand Jury. The Court further noted its previous condemnation of prosecutors completely relying before the grand jury on agent's hearsay - an agent "who knew least" about the events surrounding the crime under investigation by the grand jury. See also United States v. Arcuri 405 F.2d 691, 692 (2d Cir. 1968), cert. denied, 395 U.S. 913, 89 S.Ct. 1760 (1969).

In the case before the bar, as noted in the preliminary statement above, the grand jury heard testimony from Frank DiPalma, the victim in this loansharking prosecution, concerning the defendant Gigliotti. DiPalma's testimony is clearly direct and surely not hearsay in nature. While sketchy in part, it describes the role Gigliotti had in this crime. DiPalma was able to describe the defendant and his actions, but did not know the identity of the defendant. The identity of the defendant was obtained by the FBI as a consequence of and through use of photographs of defendant Gigliotti taken as he met with DiPalma. This meeting with DiPalma is described in DiPalma's grand jury testimony. This identity was then told to counsel for the government. The counsel for the government informed the grand jury, at the time of the presenting of the indictment to the grand jury, of defendant Gigliotti's identity.

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An offer was made by government counsel to produce the agent who made the identification, but the grand jury indicated that this was unnecessary. Clearly the statement of the government counsel was hearsay, but that there was no attempt to mislead the jury into believing that it was hearing "eye-witness" testimony nor was there any concealment of its true hearsay nature by the government. Certainly the grand jury heard hearsay on this issue, but it certainly heard direct evidence against the defendant. This is clearly permissible and sufficient under the decisions of the Supreme Court and the Court of Appeals in this Circuit. As the Court noted in United States v. James, 493 F.2d 323, 326 (2d Cir., 1974)

It is clear that "[w]e will not upset a conviction founded on an indictment based on sufficient, legal and probative evidence because other evidence of doubtful admissibility was also before the grand jury". [citing US v. Piccini, 412 F.2d 591, 593 (2d Cir. 1969), cert. denied, 397 U.S. 917, 90 S.Ct. 923 (1970); other citations omitted].

Under the above statement of the facts and law, it would appear that the opinion in United States v. Schwartz 464 F.2d 499, 511 (2d Cir. 1972) would be extremely relevant:

... But a motion to dismiss or quash an indictment because of the absence or incompetency of evidence before the Grand Jury is addressed to the discretion of the trial court, and the decision to grant or deny the motion will not be reversed unless there has been an abuse of that discretion. (citations omitted) As long as there is some competent evidence to sustain the charge issued by the Grand Jury, an indictment should not be dismissed. Coppedge v. United States, 114 U.S. App.D.C. 79, 311 F.2d 128, 132 (1962), (cert. denied, 373 U.S. 946, 83 S.Ct.

1541, 10 L.Ed.2d 702 (1963))." United States v. Tane, 329 F.2d 848, 853-854 (2d Cir. 1964).

See also, United States v. Ramsey, 315 F.2d 199 (2d Cir. 1963) (per curiam), cert. denied 375 U.S. 883, 84 S.Ct. 153, 11 L.Ed.2d 113 (1963). We conclude that there was "some competent evidence" to support this indictment and that the trial judge did not abuse his discretion in declining to dismiss it. Appellant does not claim that the Grand Jury was biased or prejudiced against him. The "integrity of the judicial process" is not seriously threatened by this indictment. United States v. Leibowitz, 420 F.2d 39, 42 (2d Cir. 1969).

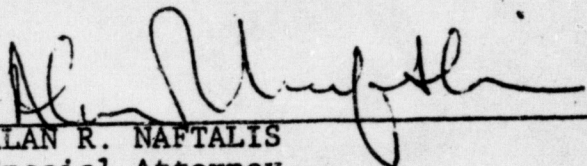
CONCLUSION

For the foregoing reasons, it is respectfully submitted that the Indictment herein should not be dismissed and the petit jury verdict of guilty as to both defendants should stand.

Respectfully submitted,

DAVID G. TRAGER
United States Attorney

By:


ALAN R. NAFTALIS
Special Attorney
U.S. Department of Justice

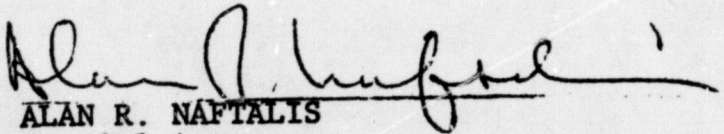
CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing
Government's Memorandum Of Law In Opposition To Defendant's Motion
For A Judgement Of Acquittal was mailed, postage prepaid, to the
following counsel of record:

Gustave H. Newman, Esq.
522 Fifth Avenue
New York, N.Y. 10036

DATE

June 24, 1975


ALAN R. NAFTALIS
Special Attorney
U.S. Department of Justice

Below is a partial verbatim conversation which ensued between FRANK DI PALMA, "ZERO" RICCARDI and RONALD GIGLIOTTI, on June 2, 1972, at Brooklyn, New York:

FD: FRANK DI PALMA
Z: "ZERO"
RG: RONALD GIGLIOTTI
UN: Unintelligible

(1)

RG: What have you got - a tire under there? All right wait a minute - I'll take you (UN) let me get my car.

FD: Why? Where do we have to go?

RG: About ten feet, about four or five blocks away - he's talking to somebody.

FD: Can't you bring him here? Cause I don't want to go riding around. I got my car broke down and everything.

RG: I'll drop you back off over here - I'll drop you back off.

FD: I don't want to

RG: (UN) He's busy - otherwise - he's busy with somebody.

FD: If I tell him he might understand what the story is.

RG: Talking to you is like talking to nobody. I just - I hang out here - about four or five blocks away.

FD: OK. Can't you tell him to come down here?

RG: He's busy - he's talking to somebody, with somebody.

FD: (UN) When's he going to come back here?

RG He didn't say. He just said "I'll drop you off - wait here". You got a car, I'll go with you - I don't (UN).

FD My car is un - broke down - my wife and my kid is sick - I have no car; I've got absolutely nothing (UN)

RG Alright what do you want me to (UN) I don't give a shit. I'll just tell him you can't make it.

FD Where is this place, do you know?

RG (UN) It's about 4 or 5 blocks up here - they were talking about something and that's why he told me to wait here.

FD I don't want to go anywhere.

RG Listen - We're not going to no house, he's waiting for you outside. I don't give a fuck. It don't make no difference to me. I'll tell him you can't make it.

FD I'm here - I don't want to travel over there. Can't you tell him I'm here? It's only right that - that if I had the money he would have met me here.

RG If you had the money I would have taken it. That's how much he wants to see you.

FD He's going to want to know why I can't pay him.

RG That's your problem, right?

FD I don't want any uh repercussions.

RG I don't think you'll get any repercussions, there's no reason for repercussions.

FD I don't want any repercussions Sunday - I don't want to.

RG I don't know why - I'll take you there if you want. There shouldn't be any problem.

FD (UN) how you get down there?

RG About 5 or 6 blocks.

FD (UN) I'll walk down.

RG You tell me what you want to do. If you don't want to go over there, I'll just call.

FD What are you going to go inside somebodies house or outside the house.

RG Outside.

FD Outside of the house? Which way do I have to go? That way or do I have to go toward the barn.

RG About uh, about 3 or 4 blocks up and about 2 blocks up that way.

FD I'll walk up.

RG Alright, let's see, you want to walk it? I'll tell you which way to go.

FD Yea, you show me the street, I know how to go.

RG It's past - you know - uh - you know where you work.

FD Yea.

RG Alright - it's - your coming back up this way - there's Browns - you know where Brown's is, right? Straight down Browns 3 blocks - about 2 or 3 blocks.

FD Down this street by Avenue "X".

RG No, no, you, you, you know where Browns is - the furniture store?

FD Browns - yea.

RG Right - on that street 2 blocks up.

FD Up this way.

RG Yea, up that way.

FD So that would be uh past what?

RG Probably Striker Street or uh Striker. I know it's on the street from Browns - you walk two or three blocks up - I'll go - I'll be outside - you'll see me standing.

FD I'll start walking.

RG All right.

FD I'll walk up this way. Straight up till I get to Browns. Make a right turn.

RG You know where Browns is. You know where Browns is?

FD It's the uh furniture store there.

RG Yea. It's a big furniture store. You know where Neils is?

FD Yea.

RG Where the delicatessen is?

FD Past, past the uh.

RG That's what I'm telling you. It's on the other side of the "L".

FD Oh. It's on past the "L" past the "L" yeah, all right. I'll start walking up that way.

RG All right.

FD I'll meet you outside by Neils.

RG He will - he'll meet you wherever you want.

FD Tell him to meet me outside of -

RG I'll have to go get him - I'll have to go get him - you know he's bullshitting with some guy -

FD That's what I mean. (UN) You can save me the trouble - it's the same thing. Can't he come down here? Gee whiz, it's the same thing as me walking up there.

FD All right - go ahead - start walking down that way - walk down that way - he'll catch up with you.

FD Walk towards the "L" down there.

(Pause while walking from the luncheonette to Neil's Deli)

Z How long have you been speaking to him? You want to be a cocksucker. You got my money?

FD (UN) I got a wife - everybody else is gotta -

Z Where's my money?

FD What does it pay to hit? You don't hit somebody.

Z Where's my money? You want to start in again?

FD Because I'm trying to explain to you - I don't even have the fucking job - what are you doing (Zero conduct body search). Yea, I'm loaded -

Z I'm not looking for a gun (UN). I'm not going to hurt you - that means something got to be done uh - FRANK, I'm telling you - sit down and read the score; let's get off the street now.

FD How am I going to pay? That's it, to tell you the truth I ain't got it - I tried my best. I went to my sister-in-law. She can't give me no money. I don't got no pay out of here. I can't even get it. I ain't been working. I ain't got any money. That's the truth and the whole truth. I ain't got it.

Z It is your fault, remember how you came to me and begged me for the money every time you came. Frank, I am telling you now, you gotta pay the money. I don't know what to tell you - you got to pay. I was a nice guy with you. I can't be a nice guy with you, I gotta be a cocksucker with you. I ain't gonna be no easy guy with you.

FD Oh I ain't gonna get hurt. Seriously boy - I took one and that's enough.

Z What am I supposed to tell the people?

FD It ain't my fault, I don't have any fucking money. I got strapped up.

Z You took one, you think you're right? You think you're right?

FD I'm never gonna get hit again.

Z You're think you're right?

FD (UN) and then my family's got problems.

Z (UN) - well you knew that.

FD (UN) I told you (UN) I told you like I'm a man that I was broke. I told you like a man I couldn't afford it after I told you to make some kind of arrangement for me - and I told you what happened - I told you exactly what happened.

Z You stand right next to him - if he does anything, shoot him right in his fucken head - I'm telling you something over here - if you'd have come to me like a man and you wouldn't try to hide like a rat -

FD I wasn't hiding.

Z Well why didn't you come.

FD The last two - the last two weeks I wasn't hiding - I wasn't hiding the last two weeks.

Z Well, where were you? Why didn't you come and see me?

FD The last two weeks I -

Z Well, where were you?

FD The last two weeks I was trying to get you - I've been looking all over the place to borrow money. As a matter of fact you're right. I got the books but I can't even pay - I'm behind two months on every fucken book I got - because I can't afford it anymore. - I ain't got no goddamn money.

Z You gotta pay - this is something that's out of my hands - you gotta pay - you gotta pay - uh - I'll tell like a man

Z if you should a come - instead of hiding for three weeks - come see me - you had a come take money off me didn't you? Huh? ~~Didn't you have to come and take money off me?~~ Ha - look did you come and take money off me. Huh?

FD Yea - but meanwhile I paid you.

Z But didn't you know how to tell me that?

FD But I paid you.

Z Frank - that's not what (UN).

FD I even borrowed off Patty and Patty gave me money like that and I even tried staying.

Z Patty's going to be held responsible for a thousand dollars - I don't want to know nothing.

FD Why should Patty be responsible?

Z He came and vouched for you. He's being held for a thousand dollars. I don't want to know nothing.

FD Yea - but I gave you two and a half thousand.

Z Let me tell you something right now - 3500 was the agreement and you - you know just what it was right? Let me tell you something now - I tried to make - uh - uh - reasonable thing with you, and uh 2500 and uh - uh - whatever you wanted to do and if you could afford 175 - I mean big deal - um - whatever you said - whatever you said - the price you said I went along with you - didn't I do that for you? What more - In other words you want to tie Cisco's money up for a year and then you look to pay them their money back and then you don't want to pay them what they've got coming. What do you think these people are made with a finger. Frank, I'm talking to you like a man - here Frank, take a walk - am I right or wrong? Think of it, be reasonable, be a reasonable person - if you knew you couldn't pay this money, why did you take it?

FD Yea - well I took the money and I was paying it right?

Z One thing don't have to do with another - now you tell me what you want me to tell these people - What do you want me to tell them? You tell me what you want me to tell them, and I'll tell them.

FD What could I tell you.

Z I'm asking you, you're the one who owes all the money.

FD I don't know what to tell you. I don't know what to tell you - I'm tired of trying to get money that's all I can tell you - what can I tell you? I'm trying.

Z You're not trying - Why aren't you working?

FD Because I can't even afford to pay my own bills.

Z That's why you're not working.

FD I haven't got no money.

Z That's why you're not working. Couldn't it be a good idea to work.

FD I been trying to work - I been trying to get money. I had a rough time. I went to my sister-in-law with my wife - she doesn't have it - she might have had it then but she doesn't have it now.

Z How did you get there?

FD I walked here - I got a pass from the subway - they don't take my passes away - I took the subway and that's it - I got a car - my wife's holding it, my car.

Z You're afraid to get in a car - You're afraid to get - let me explain something to you. If anything we'll come and get you in the street, that don't mean shit to get in a car - don't be stupid Frank - nobody's looking to do nothing to you - you don't understand this - you gotta know how to talk like a man, you're not a man Frank - you're not a man at all - Nobody is looking to do nothing to you - nobody is gonna hurt you - not like over here you took this man - now - where have you - you took this, you wanted to give him the money or the house.

FD I don't have a house - (UN).

Z You want to pay \$6000 Frank? (UN) In other in other words now you want to go in for 6000 more in other words. The way you speak you're better off dead.

Z I'll tell you right now, you're better off dead - you don't think so.

FD What about my wife.

Z Well, you know we're not very interested in anyone else's kids no more - who the fuck are you to swing a deal - you ain't a swinger. You shouldn't buy a house.

FD I looked all over for three weeks.

RG Suppose he would have you the money - you know. You know he's held responsible for that fucking money - you - you - owe him - now you ain't worried about his wife and kids.

FD (UN)

RG How could you be worried about it - why didn't you pay him?

FD I paid him every three weeks - it was like clock work it was like clock work, every week I was -

[6 Yea - but even with that money, you didn't go for 6000 more -

FD No - I didn't ask for 6000.

Z He's a big man - a big man - don't you understand. You're wrong Frank. You gotta pay - I don't know what to tell you.

FD I don't know what you want me to do?

Z Whatever you can do, you do, you got to. You know what I'm saying here, over here gotta be reasonable. I took into consideration for you so many times, you walked out on me, that's the trouble. I mean I should have been a cocksucker with you to force you. You'll have to get a thousand more off Patty anyway. Where's he now?

RG

You'll owe him \$1000 more then you'll owe Patty a \$1000. I don't give a fuck where he got to get but he got to get it too.

FD

Patty - Patty's not involved in this.

Z

What was his word when you took the first thousand dollars, what was his words then. 100 percent - the guy is good. I stand by the guy.

FD

No - don;t bother Patty.

RG

No good.

Z

Don't bother Patty - he's got to be held - well then you come up with the money (UN) what do you think this is \$5 - this is big money big money - you think this money grows on trees? Frank, I understand you're in a jam - you don't hide. You don't go in the house and don't go out and make your wife go tell people that you're not home.

FD

I wasn't home. I wasn't home.

Z

You weren't home for two weeks?

FD

I was by my cousin's house trying to make money.

Z

Frank, let me tell you something. No use running away. How did you come up with that phony check? How did you get that phony check?

RG

That check would have bounced.

FD

(UN) I didn't give you the check - I was going to show it to you.

Z

No - no - no

FD

(UN) Because I thought for sure they were going to give me a hand.

Z

Be a fucken man and don't lie to me - be a man and don't lie - because you're a fucken liar - I catch you in too many lies already - be a fucken man - people be a man with you if you fucken don't do like that. Don't be a cocksucker cause it don't pay - I'm telling you now.

FD

How much could I pay. In other words you can't afford \$50 a week, right? I'm just asking - how much could you pay back?

Z

I'm gonna go take a thousand off Patty - you gotta pay. Frank you gotta pay.

FD Then what happens?

Z You're going to have to owe me money.

Z What could you afford a week?

FD I don't know - I didn't get paid uh I didn't get no pay.

Z (UN) you gotta be a man you gotta be calm - to treat you calm you gotta show good faith - the worse thing in the world - and you want to be a nice guy on top of it - you gotta pay (UN).

FD What about Patty, I like Patty alot -
(car radio transmission)

FD What - what - what can you do to uh get out of them before going to Patty.

Z Well, Patty's gotta be held responsible for a thousand anyway -

FD Yea, but I want to find out.

Z As far as you're concerned, you didn't do nothing wrong - as far as you're concerned you didn't do nothing wrong - What have you got to be afraid of, right?

FD I've got something to be afraid of.

Z Oh. Well then in your conscience you must have done something wrong.

FD (UN)

Z Didn't you come begging for money. Am I right or wrong? Think back, remember how you used to come.

FD What do we want to do to resolve this thing with Patty?

Z I'm going to see Patty - I don't want to hear anymore - I don't even want to see you again. You gotta pay me my money. You gotta think what you want to do - I don't want to know nothing. Friends gotta be paid - Patty's held responsible for a thousand dollars. I gave him until Friday - you were supposed to - you told Patty you were going to come up with 2500 and you didn't - you didn't tell Patty that.

FD I told him that my wife's sister had it.

Oppt Larry m

Z Now, I gotta see Patty for a thousand that's like a thousand back he's gotta pay (UN) Let's come to a settlement here. I told you your balance already - 2500 - I'll take a thousand off Patty and then you'll owe me 1500.

FD Then all you gotta get is 1500.

Z You'll have to pay me every week. I heard Patty was doing pretty good. I heard you and him were partners.

FD Yea, I wish I was Patty's partner whatever he did, he did on his own. I owe the Bankers Trust - I owe fucken National City Trust

Z What happened to your money?

FD At the race tracks - trying to make up money that, I don't even have.

Z What could you afford a week?

FD I don't know?

Z What could you afford a week? I'm asking you now.

FD \$15 a week - huh.

Z Make it 25.

FD What happens one week when I don't have the money?

Z You don't got it, come. You come whether you got it or not, you tell me. Don't go hide like a fucker - be a man you got two kids (UN) be a fucken man - how you gonna show your kids a way - bring your kids up - Frank, I don't think you understand you can't go borrow money from people and never expect to pay them. You know what I'm saying? I that - what could you afford, 25 a week?

FD I'll try, I just want to get credit for a couple of weeks that's all.

Z I want to tell you now - come up with 25 a week until you get on your feet - when you get on your feet, then (UN) you'll see what you can pay that being fair?

FD Yea.

Z I don't want to see you get hurt. I don't want to see no contact.

*Gondling
defence*

Z What's the matter Frank - heart attack maybe? Take a lesson you pay - when are you going back to work? You can't go back because you owe all kinds of money in there too. What do you tend to do? How - how - how the hell you gonna - how you gonna square your debts (UN) you don't know - you don't care then - in other words - don't tell me you aren't better off dead - because what about your wife and kids -

RG What fucking good is your life (UN).

FD (UN) if I could just hang in.

RG (UN) you got a car? Why don't you drive for a car service?

FD (UN)

Z What are you gonna do?

FD I'm going to start pay you back - um - I'll see ya when - Monday?

Z (UN)

FD (UN) I don't know what you want me to do - I don't know what to say - I didn't go to work - what I'm gonna get over there, I don't know if I'm gonna have my job there or not.

Z Why don't you go in now? Why not?

FD I can't, I can't work nights.

Z Why, why don't you want to go into your job? Are you afraid to go in? Why are you afraid to go in?

FD I owe too much fucken money.

Z (UN) higher and higher is that right? (UN)

FD (UN) that kind of money in there - the money I owe out in there is like \$20 to all my good friends - \$20.

Z And you owe out 1700 to another guy and you owe out 2000 to another guy and you owe like 700 to another guy like four you hear that?

FD That ain't true - (UN) there isn't one in there that has \$5.

Z Let me tell you something - go in there like a man (UN) sit down with everybody you owe money to and settle up. Say - look if I don't work I ain't gonna get paid - I'm gonna come to work - sooner or later (UN) think that will be better then do what you're doing?

FD Yea.

Z (UN) want me to come there and be with you - huh - (UN) well, what else can I tell you? You don't earn you ain't gonna make no money - you ain't gonna put no food on the table - how you feedin your kids?

FD (UN)

Z You mean to tell me if this is not the position your in there ain't nobody to help you out?

FD (UN)

Z (UN) they don't want to help?

Z (UN) Can't you see the kind of guy he is - see (UN) what kind of guy he is?

FD I don't have the type of family you can go after money with other words - (UN)

Z Big man. Multimillionaire. What is your uncle - (UN).

FD (UN) - that's not my uncle (UN) I'm the one (UN) - All I know is that I can get \$20 to \$25 a week - right?. Friday - three o'clock - right. We'll need by then.

Z You pay up uh - I gotta go see Patty now.

FD (UN)

Z You gotta (UN).

FD Friday.

Z Go to work. Start going to work. Don't start telling me lies that the worst thing you can do - you hear what I'm telling you? Be a man and act like a man and you get treated like a man be a cocksucker and you get treated like a cocksucker (UN) take you two fucken years - try to work at that until you can get on your feet this guy

RG He's the type of guy that if he gets on his feet still won't give you no money - that type and guy you know what I mean?

Z Don't tell me your not doing the right thing. (UN).

RG You gotta - Frank you have to understand one thing. I think you know about it. You know he's responsible for a lot of money. That he's - that you've got, That you (UN) you understand. What's he supposed to do. He's gotta go make the money so that he can let you off the hook and you gonna take two years to pay him - you understand.

FD I never uh I always thought it was just his money.

RG Oh now it's just like uh you think, it's his money that's why you don't have to pay, that what you think.

FD No. That's not what I said. Your saying. I'm not saying. That - I'm just saying something else (UN).

RG You always thought it was his money.

FD I thought.

RG You got some fucken trick.

FD I thought this money in a way that that (UN). In other words you gotta pay somebody else - is that right.

Z That's right. What do I tell these people. Give them your address. I that what I tell them. You gotta you gotta phone you don't want to give me your phone number. You're lookin to die.

FD It ain't that - I don't want my wife to be pickin up the damn phone and gettin calls. People call her and everything - uh - and all that. That's too much. It's too much pressure see it isn't his fault. My wife shouldn't be stuck with it - in other words -

Z In other words I gotta suffer - my wife is gotta suffer for it. My wife and kids gotta suffer, right? You dirty cocksucker. My wife and kids are going to suffer right? Long as you, you don't suffer, right.

FD I didn't say that - you asked about my phone number - the reason why because I didn't wasn't to uh be bothered with uh.

Z Your lucky your dealing with me. Your lucky your dealing with me. You know what I do now. Gonna be a cocksucker. I going to wash my hands of the whole matter (UN) go ahead I don't know what to tell you Frank.

FD Oh. I want to explain one thing about my phone.

Z This money is coming out of my mouth. Don't forget it. Coming out of my mouth. To let you off the hook. (UN). You (UN) cocksucker (UN) be here Friday (UN).

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X

THE UNITED STATES OF AMERICA :

-against- :

73 CR 556

RONALD GIGLIOTTI :

Defendant. :

-----X

United States Courthouse
Brooklyn, New York
August 29, 1975

B E F O R E:

HONORABLE THOMAS C. PLATT, U.S.D.J.

RAYMOND P. STALKER
ACTING OFFICIAL COURT REPORTER

1
2
3 A P P E A R A N C E S:

4 DAVID G. TRAGER, ESQ.,
5 United States Attorney
6 BY: AUSA ALAN NAFTALIS, ESQ.

7 GUSTAV NEWMAN
8 Attorney for the Defendant
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1 THE CLERK: U.S.A. against Ronald Gigliotti.

2 THE COURT: Is there any reason why we shouldn't
3 proceed with sentence on this date, Mr. Newman?
4

5 MR. NEWMAN: Only two legal reasons, Your Honor.

6 In this sentence as Mr. LaRossa had indicated
7 you allowed us to reserve our motions or renew our
8 motions at the time of sentence, that is the motions
9 we made at the conclusions of the trial and at the
10 end of the Government's case. Your Honor, I applied
11 to make a motion and asked to be allowed to move on
12 behalf of Mr. Gigliotti to make a post-conviction
13 motion directed to the limited issue concerning whether
14 there was Grand Jury testimony indicting Mr. Gigliotti
15 and I made such a motion and I filed such a motion.

16 Those two items of business are still open.

17 THE COURT: I'm going to adhere to my original
18 rulings on the motions made at the end of the trial as
19 I did in the case of Mr. Riccardi.

20 MR. NEWMAN: Alright.

21 THE COURT: On your other motion characterized
22 as a post-trial motion I think you actually brought
23 it up during the trial and you may have made a motion
24 in connection with that toward the end of the trial
25 motions.

COLLOQUY

4

MR. NEWMAN: I believe I did.

THE COURT: You also made it more formally afterwards.

Based on the research that I did and based on the representation of Mr. Naftalis as I recall, I'm looking for his affidavit, that he asked the Grand Jury, that he asked the Grand Jury whether they wished to have additional testimony on the identification question from the agent of whether they should accept his statement. If the agent recalled whether it was Mr. Gigliotti. Am I correct?

MR. NAFTALIS: That's correct, Your Honor. It's on page 2 of the Government's memo of law under the primary statement.

THE COURT: It is the Court's opinion that is sufficient in view of the law which permits hearsay testimony to go before a Grand Jury for all purposes and it would seem to be for identification purposes would be just one of those purposes and I will have to deny your motion.

MR. NEWMAN: May I without burdening the record, may I make an inquiry. I have had a copy of Mr. Naftalis' memo and there was one aspect I couldn't understand. May I inquire of your office to find out

1
2 whether this is actually embodied in the testimony,
3 Grand Jury testimony or was it represented by Mr. Naft-
4 talis and was not recorded?

5 MR. NAFTALIS: The statements of the attorneys
6 in presenting the indictment to the Grand Jury for
7 their consideration are not taken down in the normal
8 course of the procedure and in this indictment. There-
9 fore that statement was made in connection with that
10 offering to the Grand Jury and was not taken down.

11 THE COURT: The statements he is referring to is
12 that Counsel asked the Grand Jury if it needed addi-
13 tional information from either defendant and the Grand
14 Jury indicated it needed no further identification of
15 the defendant at the time of the submission of that
16 indictment. The Counsel for the Government identified
17 Gigliotti as a perpetrator of the action through the
18 Grand Jury testimony above.

19 MR. NEWMAN: Thank you very much.

20 There are no other legal reasons why the defen-
21 dant is not ready to be sentenced.

22 THE COURT: Do you wish to say anything?

23 MR. NEWMAN: I would like to make several objec-
24 tions.

25 I have read the probation report yesterday and

1
2 one by way of explanation and one is by way of ques-
3 tioning the correctness of the report.

4 There are assumptions contained in the probation
5 report, Your Honor, that is dealing with Mr. Gigliotti's
6 culperability and the fact that he is less culperable
7 so to speak. I'm not getting into that. I don't
8 know how to equate that necessarily, but what troubles
9 me about the report, there is a statement in the report
10 that follows the less culperable report. He is reputed
11 to be the strong arm man and enforcer or words to that
12 nature. There is no real basis for it, Judge, and I
13 ask you to treat that as a hearsay statement. There
14 has been no substantiation.

15 THE COURT: I will bear in mind as I told Mr.
16 LaRossa before, these off-hand statements, particularly
17 when I've heard the evidence at the trial, I don't
18 pay an awful lot of attention to them.

19 MR. NEWMAN: There is one other matter that I
20 would like to devote some attention to.

21 Your Honor may remember a criminal entry that
22 started with assault and ended up as a homicide and
23 possession of a gun charge. My recollection is that
24 he pleaded or the report indicated that he pleaded
25 guilty to attempted possession of a gun.

1 THE COURT: Possession of a gun?

2 MR. NEWMAN: Yes. I understand from the defendant
3 this morning that it was an attempted possession. I'm
4 not quibbling with that, but I think to put it in pro-
5 per prospective I did not represent the defendant at
6 that time. He tell's me in this incident he was visi-
7 ting a friend. A young lady and she had a friend and
8 he was in need of a favor and she had a gun and the
9 gun went off and unfortunately it went off and he
10 pled to attempted possession of the gun for the woman
11 and that is one complication to the incident that I
12 wanted to put in proper prospective.
13

14 Your Honor, that is all the comments I have to
15 make in reference to the probation report.

16 May I say a word from my observations of Mr.
17 Gigliotti during my course of representing Mr. Gigliotti.

18 I know Your Honor heard all of the evidence.
19 Your Honor knows his role in this particular case and
20 on two occasions the witness has testified that they
21 had the tape or you heard the tape, after much dif-
22 ficulty we heard the tape concerning his alleged
23 participation.

24 He is a man who is married. I met his wife.
25 She was at my office.

1
2 He comes from an excellent family background.
3 There is no way that I could command the eloquence to
4 change the Jury's verdict.

5 In all I think the favorable aspects of Mr.
6 Gigliotti's sentence, in his favor is that he is
7 married, has a close relationship between himself,
8 his wife and his son. He works at a particular busi-
9 ness from which he earns a living, a company. He
10 maintains the family unit in tact. Not only included
11 are his wife and children, but apparently with his
12 two brothers, both his brothers, there is a close
13 strong relationship.

14 I would ask Your Honor to consider all these
15 factors in imposing sentence.

16 I would ask Your Honor also as Your Honor heard
17 first in the evidence of the alleged participation,
18 I would ask Your Honor to consider the two factors
19 in imposing sentence. That is all I have to say.

20 THE COURT: Mr. Gigliotti, do you wish to say
21 anything?

22 THE DEFENDANT: Nothing, Your Honor.

23 THE COURT: Mr. Naftalis?

24 MR. NAFTALIS: I will stand by the probation
25 report, Your Honor.

1
2 THE COURT: Well, the fact is as you know Mr.
3 Newman I did hear the evidence in this case. Perhaps
4 if I hadn't heard the evidence in this case I would
5 not have had quite such strong feelings about the case
6 as I developed. I do not think that his case is helped
7 by the evidence and from the Judge who hears the case
8 that's one unfortunate thing for the defendant.

9 MR. NEWMAN: We tried to raise a doubt and ap-
10 parently it was erased in the jurors' mind, Judge.

11 THE COURT: So I do not feel that this is a crime
12 that can be allowed to go without a fairly stiff sen-
13 tence.

14 As judged on Count 2 of the indictment, the de-
15 fendant is hereby committed to the custody of the
16 Attorney General or his duly authorized representative
17 for imprisonment of a term of 8 years and this defen-
18 dant is sentenced under 18 U.S. Code 4208 (a) (2) and
19 that such time he will be worthy of parole determina-
20 tion. The defendant should pay a fine in the sum of
21 \$10,000. to the United States Government.

22 He has a right to appeal.

23 MR. NEWMAN: If Your Honor pleases, I have in
24 my possession a notice of appeal, missing only Your
25 Honor's sentence and I am prepared to serve it and

1
2 file it this morning.

3 THE COURT: There's no need for C.J.A. treatment
4 here, I take it?

5 MR. NEWMAN: No, sir, there is not.

6 THE COURT: What is the bail?

7 MR. NEWMAN: The same bail, Judge, it was \$10,000.
8 secured by a \$1,000. cash I believe.

9 THE COURT: Any objection?

10 MR. NAFTALIS: We will continue bail pending
11 this appeal.

12 MR. NEWMAN: Your Honor, may I respectfully ask
13 in light of the appeal and the expenses attended there-
14 to, I think -- I ask for a stay of the \$10,000. pending
15 the outcome of the appeal?

16 THE COURT: I'm not going to do that, Mr. Newman.
17 I will give you a week or so to get up this money. I
18 think the fine ought to be paid.

19 MR. NEWMAN: Well, Your Honor, may I have two
20 weeks to do it or to apply to the Court of Appeals for
21 a stay of the fine?

22 THE COURT: Yes. I will give you until September
23 12th.

24 MR. NEWMAN: Thank you, sir.

25 THE COURT: September 12th is not giving you

COLLOQUY

11

very much time, we will be away from the 10th to the
12th.

MR. NEWMAN: That's true.

THE COURT: You'll have to move pretty fast.

MR. NEWMAN: Thank you, Your Honor.

(Whereupon, these proceedings were concluded.)

NOTICE OF APPEAL

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
-----X
UNITED STATES OF AMERICA,

v.

No. 73 CR 556

RONALD GIGLIOTTI, et ano.,

Defendants.

-----X

S I R :

PLEASE TAKE NOTICE that Ronald Gigliotti hereby
appeals to the United States Court of Appeals for the Second
Circuit from a Judgment of Conviction entered against him by
the Hon. Thomas C. Platt, United States District Judge, on
August 29th, 1975, wherein the defendant was convicted of one
count of violating Title 18, United States Code, Section 894,
and sentenced upon said conviction to eight years imprisonment,
under Section 4208(a)(2) and a fine of \$10,000.00.

Dated: New York, New York
August 29th, 1975

Yours, etc.

TO:

HON. DAVID G. TRAGER
United States Attorney
Eastern District of New York
United States Courthouse
225 Cadman Plaza East
Brooklyn, New York 11201

GUSTAVE H. NEWMAN
Attorney for Defendant
522 Fifth Avenue
New York, New York 10036
682-4066

Defendant's Home Address:
45 Carnegie Street
Staten Island, New York

**UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT**

UNITED STATES OF AMERICA,

Plaintiff-Appellee,
against

RONALD GIGLIOTTI,

Defendant-Appellant.

Index No.

Affidavit of Personal Service

STATE OF NEW YORK, COUNTY OF NEW YORK ss.:

I, **James A. Steele** being duly sworn,
depose and say that deponent is not a party to the action, is over 18 years of age and resides at
310 W. 146th St., New York, N.Y.

That on the **24th** day of **October** 19 **75** at **225 Cadman Plaza, Brooklyn, N.Y.**

deponent served the annexed **Appellant Brief** upon

David G. Trager
the **Attorney** in this action by delivering a true copy thereof to said individual
personally. Deponent knew the person so served to be the person mentioned and described in said
papers as the herein,

Sworn to before me, this **24th**
day of **October** 19 **75**

James A. Steele
JAMES A. STEELE

ROBERT T. BRIN
NOTARY PUBLIC, State of New York
No. 31-0418950
Qualified in New York County
Commission Expires March 30, 1977